TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, ~~1913~~. 1914

No. ~~706~~.39

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, W. S. DUNCAN & COMPANY ET AL., APPELLANTS,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, NASHVILLE GRAIN EXCHANGE, AND NASHVILLE BOARD OF TRADE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED JULY 8, 1912.

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a

United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHville, Chattanooga & St. Louis Railway, petitioners; Nashville Grain Exchange and Nashville Board of Trade, intervening petitioners,

vs.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMmerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company, intervening respondents. | No. 47.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to it:

1 *Petition of Nashville Grain Exchange et al.*

Filed August 24, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE Nashville Board of Trade, petitioners, *versus* UNITED STATES OF AMERICA, RESPONDENT. | In Equity, No. 46.

PETITION.

To the honorable judges of the United States Commerce Court:

The Nashville Grain Exchange and the Nashville Board of Trade, both being corporations chartered under the laws of Tennessee, exhibit this their petition against the United States of America, and thereupon state and show the following:

I.

Petitioner, the Nashville Grain Exchange, incorporated, is an organization of the grain dealers of the city of Nashville, Tenn., including in its membership practically all of the dealers in
2 grain, grain products, and hay in said city; and petitioner, the Nashville Board of Trade, incorporated, is the leading commercial organization of the city of Nashville, representing in an organized way the bulk of the substantial business interests of said city; and this last named petitioner joins herein because the invest-

ment in the grain business of Nashville is so large and so interwoven with the banking, real estate, insurance, and other business interests of Nashville that no injury can be suffered by the grain interests of Nashville without affecting the commercial welfare and prosperity of the entire city.

II.

Heretofore, on the 25th day of August, 1908, W. S. Duncan & Co. and numerous other grain dealers of the cities and towns of Atlanta, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, Athens, and Columbus, all located in the State of Georgia, in behalf of themselves and all other persons like situated, in behalf of the localities in which they did business, and in behalf of the public affected by the things complained of, filed with the Interstate Commerce Commission, which will be hereinafter designated the "commission," a petition against the Louisville & Nashville Railroad Company, a corporation of the State of Kentucky, the Nashville, Chattanooga & St. Louis Railway, a corporation of the State of Tennessee, and various other railroad corporations named in said complaint, all being common carriers which, with their various connections, as it was by said complainants alleged, did
3 participate in the transportation of grain, grain products, and hay moving from and through Mississippi and Ohio River crossing points to and via Nashville and beyond, to points in southeastern and Carolina territory, including the cities and towns named in said complaint.

The petitioners in said complaint before the commission set forth and complained of three things in the main, to-wit:

(1) That the reshipping or transit privilege extended by said carriers at Nashville on grain, grain products, and hay coming there from or through Mississippi and Ohio River crossings, and reshipped from Nashville into southeastern and Carolina territory, were illegal in substance and in principle; or, at all events, these privileges amounted to an unlawful preference or advantage given Nashville over the Georgia points mentioned; and (2) that certain elevation allowances extended by the carriers to grain shippers at Nashville were unlawful and discriminatory against the Georgia points named; and (3) that an "any quanty rate" given by the defendant carriers on grain, grain products, and hay between Nashville and southeastern and Carolina territory was unlawful and discriminatory; and that, consequently, a differential should be established between carload and less than carload shipments of such commodities, so that the rates charged should be adjusted with reference to the cost and value of the service performed.

A copy of said original complaint which was filed with the commission as aforesaid will be filed on or before any hearing, marked "Exhibit A," and prayed to be read as a part hereof.

4 On September 7, 1908, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway

filed their answer to the complaint aforesaid with the commission; and in said answer said carriers denied that under their adjustment of rates and their rules and practices at Nashville there were any things done or permitted that were unlawful, or that operated to unduly and unlawfully discriminate in favor of Nashville and against said complainant; and a copy of this answer will be filed on or before any hearing, marked "Exhibit B," and prayed to be read as part hereof.

On September 7, 1908, the Atlantic Coast Line and the other carriers who had been named in the original complaint before the commission, except the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, filed their answer to said complaint with the commission; and in said answer said carriers set forth that they did not originate business from Nashville, were not initial carriers there, and denied that they were guilty of any violation of the act to regulate commerce, or of any unlawful discrimination in favor of Nashville and against Atlanta and the other complaining Georgia points. A copy of said answer will be filed on or before any hearing, marked "Exhibit C," and prayed to be read as a part hereof.

On the 26th day of September, 1908, petitioners herein, the Nashville Grain Exchange and the Nashville Board of Trade, upon their application to the commission, were permitted to intervene in the controversy before the commission, and an order was entered by the commission accordingly. A copy of this order will be filed on or before any hearing, marked "Exhibit D," and prayed to be read as a part hereof.

III.

After the taking of testimony upon the issues made before the commission by the complaint and answers above recited and exhibited, the original decision of the commission in this matter was rendered, on June 24, 1909 (Opinion No. 1026, 16 I. C. C. Rep., 590), and an order was entered accordingly on the same day. By this order the reshipping privileges extended by the carriers at Nashville upon the commodities aforesaid were declared to be unlawful; and the carriers were ordered to desist from extending or continuing the same after September 1, 1909. The commission at the same time ordered the carriers to desist, after September 1, 1909, from granting any elevation allowances at Nashville. The commission, at the same time, held that it had no reason or power to interfere with the "any quantity rate" complained of, and decided the controversy as to this rate in favor of said carriers. The opinion of the commission holding these things appears in the 16th volume of the Interstate Commerce Commission reports, at pages 590 to 599, inclusive, but a copy of said opinion and order will be, for convenience, filed on or before any hearing, marked "Exhibit E," and prayed to be read as a part hereof.

With respect to the part of the above order of the commission whereby it refused to interfere with the "any quantity rate,"
6 aforesaid, the complainants before the commission acquiesced and never took any steps to have that part of said order reviewed or annulled, and that part of said order is not now involved in this petition.

With respect to that part of the above order of the commission directing the carriers to desist, after September 1, 1909, from granting said elevation allowances at Nashville, the effective date of said order has, from to time to time, been extended, and is not now operative, but is abiding the event of a decision by the courts of certain litigation therein pending, in which the validity of the principle of elevation allowances throughout the country is under examination; and consequently that part of the above order dealing with elevation allowances is not now involved in this petition.

With respect to that part of the above order directing the carriers at Nashville to cease and desist, after September 1, 1909, from extending or continuing the reshipping practice at Nashville—the effective date of said part of said order was, upon the application of the carriers involved, and of your petitioners herein, and of numerous grain dealers and shippers at places other than Nashville, postponed and extended first until January 1, 1910, and again until April 1, 1910; and finally until the further order of the commission—which postponements were made, as recited in the order entered by the commission on June 3, 1910—

"For the purpose of holding the order in abeyance so far as it related to transit and reshipping privileges and practices at
7 Nashville, Tennessee, in connection with the transportation of grain and hay, until the completion of an investigation by the commission into practices of this sort and the announcement of its conclusions based upon such investigation, in order that such modification of or addition to said order as might be necessary to prevent unjust discrimination as between places with respect to such transit privileges and practices might be made upon the completion of the investigation aforesaid," etc.

A copy of the last-quoted order, reciting the previous extensions of the effective date of said part of said original order, will be filed, on or before any hearing, marked "Exhibit F," and prayed to be read as a part hereof.

Shortly after the opinion and order of June 24, 1909 (16 I. C. C. Rep., 590), above referred to, which condemned, for the reasons therein given, as unlawful in substance and principle the allowing by the carriers at Nashville of said reshipping practice, the commission became advised that it had pronounced said order upon a misconception both of fact and of law; and when it was made to appear by petitions and applications coming from different sources as well as from petitioners herein, that holding the reshipping practice at Nashville to be unlawful in substance and principle would be revolutionary in the traffic world, and would affect, in a destructive and

confiscatory way, vast investments at hundreds, and probably thousands, of markets through the country, where for more than
8 a quarter of a century similar reshipping practices upon various commodities had been allowed by the carriers throughout the county, then it was that the commission, of its own motion, instituted an investigation as to the extent and nature of transit and reshipping practices throughout the country, and the methods followed therein, as well as the results thereof; and pending this general investigation, the commission postponed the effective date of the order directing the abolition at Nashville of the reshipping practice "until further order of the commission," by the order of June 3, 1910, last referred to and exhibited.

Thereupon the commission proceeded with its general investigation of the subject of transit privileges, and after hearings upon this subject at Washington, Chicago, Montgomery, Memphis, and Boston, the commission, on May 3, 1910 (Opinion 1247, 18 I. C. C. Rep., 280), made a detailed report and finding, in which it receded from the rule and doctrine it had announced in condemning as unlawful in substance and principle the reshipping practice at Nashville; and in this report and finding of May 3, 1910, the commission refused and declined to condemn as illegal the principle of transit privileges as extended by the carriers throughout the country, in divers markets and concentration points, for various commodities. For convenience, a copy of said report and finding of May 3, 1910, will be filed, on or before any hearing, marked "Exhibit G," and prayed to be read as a part hereof.

After the commission has concluded its general investigation into the subject of transit privileges as extended throughout the
9 country, and announced its report last above referred to, there was nothing left of the order which the commission had pronounced on June 24, 1909 (16 I. C. C. Rep., 590), in so far as said order condemned the reshipping practice at Nashville, except alleged discrimination at Nashville against the complaining Georgia points, in allowing at Nashville the reshipping privilege with respect to grain, grain products, and hay. The carriers at Nashville had, in the meantime, in deference to views expressed by the commission (16 I. C. C. Rep., 598–599), ceased to allow any reshipping at Nashville upon grain, grain products, and hay coming to Nashville from or through the Memphis gateway. Though the carriers denied then, and deny now, that permitting reshipping at Nashville upon said commodities from or through Memphis resulted in anything that was unlawful or objectionable, they were nevertheless anxious to satisfy any alleged grounds of criticism urged against the reshipping practice at Nashville, and accordingly did this for the purpose of obviating the opinion expressed by the commission to the effect that permitting reshipping at Nashville on said commodities received from or through Memphis presented opportunities for abuses which the commission said it could not approve.

Accordingly, the commission, by the aforesaid order, entered on June 3, 1910, as amended by an order entered on June 29, 1910, ordered and directed the carriers directly and indirectly involved in said reshipping practice at Nashville, to appear and show cause before the commission, at Washington, on September 27, 1910,
10 if any cause they had, why the order originally pronounced abolishing reshipping practices at Nashville—

"Should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating in any respect whatever between Nashville and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located within the State of Georgia, and the shippers, consignees, and dealers, respectively, with regard to such transit privileges and practices as pertain to grain, grain products, and hay, upon the ground that such discrimination is undue, unreasonable, and unlawful."

Copy of said amendatory order of June 29, 1910, will be filed, on or before any hearing, marked "Exhibit H," and prayed to be read as a part hereof.

Thereafter the carriers filed with the commission an answer to the rule to show cause set forth in the order last above quoted, and the intervening defendants in said cause before the commission, who are petitioners herein, likewise filed their detailed answed to said rule; and in said answers it was denied that the granting of these transit privileges with respect to grain, grain products, and hay by the carriers at Nashville amounted to any discrimination against Atlanta and the other Georgia points named, or amounted to any undue or unlawful preference and advantage given Nashville as against these points. The answer of the intervening defendants set
11 forth in detail all the facts and circumstances with respect to Nashville, and the grain business at Nashville, which differentiated that market from the grain markets at Atlanta and the other complaining Georgia points named. Copies of said answers which the carriers and your petitioners herein thus filed before the commission, together with copies of the exhibits thereto, will be filed, on or before any hearing, marked, respectively, "Exhibit I" and "Exhibit J," and prayed to be read as a part hereof.

Thereafter, on September 27 and 28, 1910, in pursuance of the commission's orders of June 3, 1910, and June 29, 1910, hereinbefore referred to, said carriers and your petitioners appeared in Washington, and introduced and examined numerous witnesses upon the question of the different circumstances and conditions existing at Nashville, as compared with Atlanta and the other Georgia points named, with respect to the traffic in grain and grain products and hay.

The proof introduced at this hearing by the carriers and your petitioners was, in accordance with the order of the commission, and the direction of the commissioner conducting said hearing and examination, limited to the single issue of discrimination; was full, de-

tailed, and clear with reference to the existence of circumstances and conditions prevailing at Nashville with respect to the grain traffic totally dissimilar from the circumstances and conditions prevailing at any of the complaining Georgia points with respect to such traffic; and said proof fully, with great detail, showed an ample reason and justification, under the law, for the continued
12 allowance of the reshipping practice upon grain, grain products, and hay at Nashville. This proof was not only full, detailed, and ample, but it was not contradicted or attempted to be contradicted in any sort of way, there being no witnesses introduced, nor evidence produced, by the complaining Georgia points which proved or tended to prove to the slightest extent any undue or unlawful discrimination against Atlanta or the other Georgia points named by the continued extension of said reshipping practice at Nashville. There were no witnesses at all introduced or examined at said hearing on behalf of said complaining Georgia points, nor has the commission ever claimed to know facts, from any source, tending to controvert the uncontradicted evidence introduced at said hearing.

Thereafter, and in the course of a few weeks following the introduction of the uncontradicted proof last above mentioned, this remaining matter of the alleged discrimination against the Georgia points named was argued before the commission at Washington, and the decision of the question was taken under advisement.

Many months thereafter, and recently, to wit, on June 9, 1911, the commission, notwithstanding the mass of evidence above referred to, which had not been contradicted nor attempted to be contradicted in any sort of way, and which demonstrated the absence of any sort of unlawful discrimination against the complaining Georgia points, announced a supplemental report and order, purporting to recite a previous history of the controversy, and found and
13 concluded that said reshipping practices with respect to grain, grain products, and hay, allowed by the carriers at Nashville, were unlawful in that they gave an undue and unreasonable preference and advantage to Nashville and to the grain dealers at Nashville, and subjected the Georgia points named to an undue and unreasonable prejudice and disadvantage; and by said order the carriers at Nashville were severally notified and required to cease and desist, on or before August 1, 1911, and for a period of at least two years thereafter, to abstain from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville, the privilege of so rebilling or reshipping said products from Nashville, so long as said carriers refused and refrained from granting the same privilege to the complaining Georgia points, or either of them, or to the dealers in said commodities located at said Georgia points.

Said supplemental report of the commission appears printed in volume 21 of the Interstate Commerce Commission reports, pages 186 to 194, inclusive; but for convenience a copy of said supple-

mental report and order of the commission will be filed, on or before any hearing, marked "Exhibit K," and prayed to be read as a part hereof.

Thereafter, in order to give your petitioners and the carriers affected a sufficient opportunity to present their petitions to this honorable court, and have the opportunity to apply thereon for a stay or suspension of the operation of said order before it would become effective at Nashville, the commission, upon the appli-
14 cation of your petitioners and said carriers, extended the effective date of the order last above mentioned for thirty additional days, or until September 1, 1911. A copy of the order granting this last extension will be filed, on or before any hearing, marked "Exhibit L," and prayed to be read as a part hereof.

As revealed by the two orders last above mentioned, the carriers at Nashville are ordered from and after September 1, 1911, to desist from longer extending said reshipping practice upon grain, grain products, and hay at Nashville, unless said reshipping privilege or practice shall, in the meantime, be extended by said carriers to the shippers and markets at the complaining Georgia points.

Unless said last-mentioned order of the commission is stayed or suspended by this honorable court, it will, as petitioners are informed and believe, be obeyed by the said carriers abolishing and withdrawing said reshipping privilege and practice at the Nashville market, which said withdrawal will visit irreparable damage and dire disaster and destruction upon the grain market at Nashville, as herein will be more fully set out and explained, and therefore petitioners aver that the matter and amount in dispute in this proceeding between them and the respondent far exceeds the sum of two thousand ($2,000.00) dollars exclusive of interest and costs.

IV.

Petitioners aver that all the facts and circumstances herein stated and set forth furnishing the reasons which constrained the beginning and continuance of the said reshipping practice upon grain,
15 grain products and hay at Nashville, and showing all the facts and circumstances differentiating Nashville's condition with respect to the transportation and marketing of said commodities from the condition of any of the Georgia points mentioned; and showing that the continuance of said reshipping practice at Nashville in no wise amounts to any undue or unlawful preference or advantage given to Nashville over said Georgia points—were all made to appear by the uncontradicted evidence introduced before the commission. Petitioners show that there was no conflict in the evidence before the commission upon any material or determinative facts with respect to any of these matters; and petitioners accordingly aver that the order of the commission herein complained of, by which the carriers are directed to cease and desist, from and after September 1, next, from longer extending said reshipping practice at Nashville, unless

said practice is in the meantime extended at the Georgia points named, is an order that is oppressive, unlawful, and totally void, and there was no evidence at all before the commission tending to warrant, sustain, or make proper said order; and petitioners here exhibit a full and complete copy of the transcript of all the evidence introduced and presented to the commission at both hearings, which was all the evidence ever before the commission with respect to this matter; and said complete transcript of the evidence will be filed, on or before any hearing, marked "Exhibit M," and prayed to be read as a part hereof.

16 Petitioners are advised that in a case like this, where the commission has pronounced an order without any material evidence at all to support and sustain the same, this court is not concluded by such a finding of the commission based upon admitted facts which in no wise tend to sustain the conclusion reached.

Petitioners are advised that such an order is oppressive and absolutely void; that such an order is not within the scope of the authority delegated to the commission, and that although said order may, in form, be within the power delegated to the commission, nevertheless it must be treated as not embraced therein, because the exercise of authority by the commission has been manifested in such an unreasonable manner as to cause it, in truth, and in substance, to be beyond the power of the commission. Petitioners are advised that where there is no conflict with respect to any material or determinative fact before the commission, and the commission has, upon such admitted facts, pronounced an order, it necessarily results that only questions of law are presented to this court, when asked to review and annul such an order; and that such questions of law will, without any sort of hindrance or hesitation, be reviewed and passed upon by the court, which will declare the law applicable to the uncontradicted facts.

Petitioners are advised and aver that upon the uncontradicted evidence aforesaid, and upon the admittedly true facts made to appear without contradiction before the commission, and herein set forth, with respect to the origin and continued existence of said reshipping practice at Nashville, and the confiscation of property

17 which will result from now abolishing said practice—the order of the commission herein complained of, as will be hereinafter fully explained, has the effect of depriving petitioners of their property without due process of law, in violation of the Constitution of the United States, and more especially of the fifth amendment thereto.

V.

Petitioners aver that the tariffs of the carriers serving the Nashville market, by which the said rebilling or reshipping arrangement at Nashville is maintained, provide, in substance, that on grain, grain products, and hay shipped to Nashville from Mississippi and

Ohio River crossing points the local rate shall be paid; and that these shipments may then be stopped at Nashville for a given period of time, during which they may be rebilled from Nashville to final destination in southeastern and Carolina territory; and that on such shipments, so rebilled, the freight charges into and out of Nashville shall be readjusted so that, as a result, the total transportation charge accruing on any one shipment from any given Ohio or Mississippi River crossing via Nashville to any given destination in said territory shall exactly correspond with the transportation charge legally assessible on that shipment had it been billed and moved through from its point of origin at the Ohio or Mississippi River to its final destination without being stopped at Nashville, or had it not been moved via Nashville. Copies of said tariffs will be filed on or before any hearing, marked "Exhibit N," and prayed to be read as a part hereof. There was no conflict in the evidence before the com-
18 mission with respect to said reshipping practice at Nashville being there extended by the rail lines in exact accordance with the tariffs last above exhibited.

Petitioners aver that said reshipping practice upon grain, grain products, and hay, adjudged by the commission to be unlawfully extended by the carriers at Nashville, because discriminatory against the Georgia points named, has been so allowed and extended by the carriers there for more than forty years; and during all this time this reshipping practice has been continuously extended at Nashville, not voluntarily by the carriers, nor for the purpose of giving any favor or preference to the Nashville market or dealers; nor was said reshipping practice originally sought by Nashville grain dealers; nor was the same originally adopted, nor has it been since continued, by the carriers, for the purpose of giving Nashville or Nashville dealers any artificial or undue advantage over any other locality or persons in any other locality. Petitioners aver that more than forty years ago this reshipping practice was begun at Nashville, and that it has been continuously since extended by the carriers at Nashville in response to inexorable competitive conditions at Nashville, and in response to the inexorable contingencies and exigencies at Nashville incident to the handling and carriage of grain. The allowance of this reshipping practice at Nashville was begun by the rail lines serving the Nashville market, and has ever since been continued, at Nashville, as an expedient forced upon these carriers involuntarily and in self-preservation, to enable them to compete with steamboats and barges transporting grain, grain products, and hay by the
19 Mississippi and Ohio Rivers and by the Cumberland River, to Nashville. In no other way than by the adoption and continuance of said reshipping arrangement could these rail lines have steadily, effectively, and profitably engaged in competition with these boats; and by no other arrangement now can these rail lines effectively and profitably meet and reckon with this river competition, without serious impairment to the value of their lines, and particularly their lines west of Nashville, which parallel and immediately

compete with the Cumberland River, a navigable and important waterway—upon the banks of which the city of Nashville is located. And petitioners aver that there was no conflict in the evidence before the commission with respect to the causes which constrained the origin of this reshipping practice by the rail lines at Nashville, more than forty years ago, nor with respect to the causes which have ever since constrained the continuance of this reshipping practice at Nashville.

VI.

Petitioners further aver that the city of Nashville is 289 miles northwest of Atlanta, and that much nearer the Mississippi and Ohio River crossing points, and that much nearer the great western and northwestern grain producing sections, than are Atlanta or any of the other Georgia points named.

Nashville is located on the Cumberland River, about 190 miles above its confluence with the Ohio River; and the Cumberland River is navigable to Nashville and for 175 miles above Nashville.
20 The Cumberland River has always been navigable below Nashville, to its junction with the Ohio River, for nine or ten months of the year; and said river, now that the United States Government has appropriated and expended vast sums of money upon the installation of locks and dams in said river, will be navigable to Nashville from its junction with the Ohio River practically throughout the year; and the navigable season of the Cumberland River now corresponds, and has always corresponded, with the season for the moving and handling of the grain crops of the country; and as a matter of fact for light-draft boats the river is and has always been navigable at all seasons.

Nashville is located in a great surplus grain producing State and section, and by reason of its location upon the banks of the Cumberland River, and the confluence of that river with connecting navigable rivers, is directly in touch, by means of steamboats and barges upon said river, with a great grain-producing section of the country lying in the valleys of the Mississippi, Ohio, Wabash, and Cumberland Rivers; and Nashville is the only city that occupies such a favorable situation.

None of these things are true of Atlanta nor of any of the other complaining Georgia points. These Georgia points are not located in a surplus grain producing section of the country; and while there is considerable grain grown in Georgia, there is grown within the limits of the southeastern and Carolina territory materially less grain than is consumed; and all this territory, including the State of Georgia, necessarily draws large supplies of grain, grain
21 products, and hay for local consumption, from the grain-producing section in which Nashville is located, and from the great grain-producing West and Northwest, directly tributary to Nashville by steamboats plying the rivers aforesaid, as well as by direct rail connections.

Neither Atlanta nor any of the other complaining Georgia points have any water connection with the grain-growing sections of the United States at all. Neither Atlanta nor any of the other complaining Georgia points are anything except trading or jobbing points in consuming territory, so far as grain, grain products, and hay are concerned; and none of these Georgia points are in any sense natural concentration, distribution, or primary markets for grain, nor have they ever been such markets.

The city of Nashville, with respect to its presence in, and proximity to, grain-producing sections of the country, and with reference to water competition, is exactly circumstanced, so far as the moving and handling of grain crops are concerned, as are the cities of Cincinnati, Louisville, Evansville, Paducah, Cairo, Hickman, and the other Mississippi and Ohio River crossing points—the steamboats have for more than half a century, and long before Atlanta and the other Georgia points had any rail connections at all with the grain-producing sections of the country, been plying between Nashville and the Mississippi and Ohio River crossing points named, and bringing into Nashville and there concentrating for distribution in southeastern territory, large quantities of grain from the Mississippi, Ohio, Wabash, and Cumberland River Valleys; and
22 these steamboats have been doing this in competition with the rail carriers ever since the construction of railroads from these Mississippi and Ohio River crossing points to and from Nashville and into southeastern territory.

The cities of Cincinnati, Louisville, Evansville, Paducah, Cairo, and Hickman, and the other Mississippi and Ohio River crossing points, have the same any quantity through rates upon grain moving into southeastern and Carolina territory as are applied at Nashville upon grain coming there from or through these respective river crossings and moving via Nashville to the same territory, and all said river crossings points have extended to them by the rail carriers serving said markets—which are, in part, the same rail carriers which serve the Nashville market—said reshipping or rebilling priviliges and practices upon grain, grain products, and hay, exactly the same in substance, principle, and effect as the reshipping practice ordered by the commission to be withdrawn at the Nashville market. In fact, Nashville had the reshipping practice upon grain and grain products even before this practice was ever extended at any of these Mississippi and Ohio River crossing points, because Nashville was the first concentration market for grain shipped by rail in southeastern consuming territory, and was such a concentration market before any of the Mississippi and Ohio River crossing points had any rail connections at all with Atlanta, or with Carolina and southeastern territory.

23 Petitioners aver that it would now be artificial, unnatural, and discriminatory against Nashville to deprive it of the reshipping practice and destroy it as a concentration market, and leave these Mississippi and Ohio River crossings in possession of such

transit privileges. The continuance of the transit privilege upon grain at Nashville is necessary to equalize Nashville with these river crossings, in the same class with which Nashville is clearly to be placed. And petitioners say that it is absolutely certain that if reshipping were taken from Nashville it would not benefit Atlanta or any of the other Georgia points named, and the only effect it would have would be to distribute Nashville's trade among the Mississippi and Ohio River gateways, which would administer upon the business of the defunct Nashville market, because they would still, with their transit privileges protecting their same through rates to the Southeast, which Nashville, by means of the reshipping practice now possesses, enter Atlanta and contiguous Georgia territory exactly as they do, and as Nashville does, now.

And petitioners aver that all the above facts and circumstances showing Nashville's right to be classed with the Mississippi and Ohio River crossing points with respect to the grain traffic and grain market, and differentiating the condition of the grain traffic and grain market at Nashville from the conditions obtaining at any of the Georgia points above named, were affirmatively and amply established by the uncontradicted evidence before the commission.

24

VII.

Petitioners further aver that the inauguration of said reshipping practice at Nashville about forty years ago, and its continuance ever since that time, has operated to obtain for the rail lines north and west of Nashville by far the larger part of that portion of the grain business which moves from and through the Mississippi and Ohio crossing points, via Nashville, into the Southeast. The steamboats on the Cumberland River, however, continue to bring large amounts of grain into Nashville; and every rail line entering and leaving Nashville has constructed its tracks up to the river, and by means either of an inclined track to the river's brink, or through a river and rail elevator located upon the banks of the river at Nashville, grain can be, and is now, handled and loaded directly from boats to cars. The number of boats available in the Cumberland River has materially decreased since said reshipping practice has been in effect at Nashville, though there are still numerous boats with large available tonnage in this trade; and there are at present three regular packet lines on the Cumberland River, which actively participate in the transportation of grain, grain products, and hay from the Mississippi and Ohio River crossing points to Nashville. Barges are used in connection with these steamboats for handling said commodities, and in heavy grain seasons transient boats and tows are brought into the Cumberland River and enter actively into the carrying of grain from the great grain-producing valleys of the Ohio, Wabash, and Mississippi Rivers into Nashville.

25 Petitioners further aver that if the reshipping arrangement were withdrawn at Nashville, and the existing local rail rate

from Mississippi and Ohio River crossing points up to Nashville were continued, and if the present local rail rates out of Nashville into southeastern and Carolina territory were likewise continued, the boats could bring grain, grain products, and hay up to Nashville from all these Mississippi and Ohio River crossing points, and make a profit by doing so; and the grain could then be loaded on the cars at Nashville and shipped to southeastern territory and pay the local rail rates now charged from Nashville to such territory; and the entire boat and rail rate, including the cost of rehandling at Nashville, would be less than the existing through rail rate from the Mississippi and Ohio River crossing points via Nashville to southeastern territory, which is now protected by the reshipping privilege extended at Nashville. And petitioners aver that now, and for all the years that the rail lines at Nashville have there had in effect said reshipping practice, grain actually does move and has moved into Nashville by boat and is transshipped at the local rail rate out to the Southeast in competition with the all-rail through rate protected at Nashville by the reshipping practice.

Petitioners aver that the rail lines are more expeditious and certain, and this attracts business to them; and the through rate protected by the reshipping practice at Nashville leaves such a small margin for the boats on the through business, which is the bulk
of the business, that the movement of grain into Nashville by
26 the river is successfully met by the rail lines, which thus obtain most of the local and most of the through business.

Petitioners aver that all the above facts and circumstances with respect to Nashville's past and present ability to receive shipments of grain, grain products, and hay by steamboats upon the Cumberland River, and all the foregoing facts and circumstances with respect to the way and manner in which the reshipping arrangement at Nashville has enabled the rail lines there to successfully meet and reckon with the river competition upon both the through and the local traffic in such commodities at Nashville were made to appear to the commission by uncontradicted and admittedly true testimony.

Petitioners are advised that since the reshipping practice at Nashville has the effect of obtaining for the rail lines the bulk of the through business from and via the Mississippi and Ohio River crossing points into the Southeast at the existing through rates, and at the same time secures for the carriers a substantial portion of the local business of hauling grain from and via the Mississippi and Ohio River crossing points to Nashville at the existing local rate—the carriers have the legal right to thus, in the most effective way, conserve their revenues, and in the most effective way to compete with the boat lines on the Cumberland River. While the supplemental report of the commission, of June 9, 1911 (21 I. C. C. Rep., 186–194), hereinbefore referred to and exhibited, finds (at pp. 190, 191) that
by the adoption of the reshipping privilege at Nashville the
27 carriers have been able to successfully reckon with river competition, and at the same time to secure for themselves a large

part of both the through and local transportation of grain at Nashville in competition with the boat lines, while at the same time the carriers are able by this reshipping practice to maintain their present through and local rates at Nashville upon said commodities, the commission at said place nevertheless finds that the effect of maintaining this reshipping practice at Nashville is to put grain shippers at Nashville in such a favorable position with respect to both the through and local grain business that an undue preference and advantage results. In this connection petitioners are advised that if any advantage does so result with respect to both the through and local business it is not any undue and unlawful preference and advantage to Nashville, but is, on the other hand, a preference and advantage which results to the grain shippers at Nashville by reason of Nashville's location upon the Cumberland River, and by reason of the absolute right of the rail lines to adopt the most effective means of meeting the competition of the boat lines at Nashville with respect to both local and through shipments; and petitioners are advised that when the commission finds, as it does in its last report, at the pages indicated, that the reshipping practice at Nashville from the carriers' standpoint most effectively, and, in the view of the commission, most "adroitly" meets and nullifies river competition both with respect to the through and local shipments of grain at Nashville, it results, as a matter of law, as petitioners are advised,

28 that the carriers are authorized to maintain the reshipping practice at Nashville as the most effective means of meeting this river competition upon both the through and local business, and that any advantage or preference indirectly resulting therefrom to grain shippers at Nashville is not a "voluntary" preference given to these grain shippers, and consequently not an undue and unlawful preference and advantage within the meaning of the law.

And especially is this true, as petitioners are advised, in view of the fact that no attack has been made upon either the local rate from any of the Mississippi and Ohio River crossings to Nashville or the through rate from any of these points to the Southeast, via Nashville, as being unreasonable rates, and the commission has never found, nor has it been asked to find, that any of said rates are intrinsically unreasonable rates or charges for the services performed by the rail carriers at Nashville.

Petitioners are advised that it is the absolute right of the carriers to maintain their local and through rates upon grain shipments at Nashville as high as they can, so long as said rates are reasonable rates for the services performed; and if the existence of the reshipping arrangement at Nashville operates, as the commission has found, to enable the carriers to maintain these rates in competition with the boat lines as high as these reasonable rates now are, and at the same time secure, in competition with said boat lines, the greater part of both the local and the through business at Nashville, it necessarily results, as a matter of law, as petitioners are advised,

29 that the carriers have the right to do this, and that no undue and unlawful preference or advantage to Nashville, as compared with any other point not similarly situated with respect to river competition, can or does possibly result therefrom.

And in this connection petitioners are advised that, as a matter of law, the rail carriers at Nashville have a right to compete with the boat lines upon the Cumberland River for this through traffic at Nashville, to the exclusion of the local traffic; or said rail carriers would have a right to compete with said boat lines for the local traffic to the exclusion of the through traffic, or both, if these rail lines so desired; and that these rail lines have the right to so compete for this business, or any part of it, in the most effective way, so long as the rates maintained are reasonable and compensatory rates; and when admittedly, as the commission has found, the reshipping practice in effect at Nashville enables the rail lines most effectively to reckon with the steamboat competition upon the through business, and at the same time secure for themselves a substantial portion of the local business, it results, as a matter of law, as petitioners are advised, that no undue or unlawful preference or advantage to Nashville, or to the grain shippers at Nashville, can or does thereby result.

VIII.

Petitioners further aver that when the reshipping practice was first put into effect by the rail lines at Nashville to successfully reckon with steamboat competition with respect to the transportation of said commodities, all the handling facilities in the 30 way of elevators and warehouses for grain at Nashville were located on the banks of the Cumberland River, where they could be directly reached by such boats. For the last forty years, however, while this reshipping practice has been continuously in effect by the carriers at Nashville, it has resulted that, upon the faith of this practice, most of the handling facilities for grain, in the form of elevators, warehouses, and mills, have located themselves away from the river, and exclusively on the rail lines, though there are some few still located on both river and rail.

If the reshipping practice were withdrawn at Nashville, and the local rail rate in and out had to be paid, the present grain business at Nashville would be almost entirely driven out of existence. Large and extensive elevators, warehouses, and handling facilities which have come to be located exclusively on the rail lines at Nashville, which handling facilities aggregate in value millions of dollars, and are distributed over a territory varying in width from two to ten miles, would be rendered useless for the purposes for which they were constructed; and the grain dealers at Nashville would be driven from the field, so far as concerns through business with the Southeast, which is the great bulk of their business.

Petitioners aver that after a lapse of time, and a suspension of business which would wreck those now engaged in the grain business

at Nashville, and make necessary large additional investments in handling facilities on the river, the grain business at Nashville might, perhaps, be rebuilt from the ground up on a purely
31 river basis for the in-bound movement. But enormous loss and confiscation of values would certainly be entailed in working out this reconstruction.

Petitioners further aver that after this were done, and the great loss had been suffered, Nashville dealers could do business with the Southeast by bringing their grain into Nashville entirely by river and by shipping it out over the rails into the Southeast and paying the local rate. And, in the meantime, while all this reconstruction of the grain market at Nashville was being worked out at an enormous loss to the grain interests there, the Mississippi and Ohio River gateways, which have the reshipping practice protecting the same, any quantity through rates which Nashville now enjoys on such shipments to the Southeast would be doing the business in the Southeast that the Nashville market is now enabled to *to* do, and Atlanta and the other complaining interior jobbing points in Georgia would not be benefitted to the slightest degree, while the consumers in the Southeast would be deprived of one competitive supply market, and the nearest one, in point of distance, to them.

Petitioners aver that all of the foregoing facts and circumstances with respect to present conditions at Nashville, and the loss that would result there, without advantage or gain to anyone, if the reshipping practice at Nashville were abolished, were made to appear to the commission without any sort of contradictory or countervailing evidence of any kind, in the proceedings hereinbefore referred to.

32

IX.

Petitioners aver that not only does the location of Nashville within and in convenient proximity to the great grain-producing western and northwestern sections of the country operate to make Nashville a natural and logical primary, concentration or distributing market point for grain, grain products, and hay, and as such warrant the rail carriers at Nashville in there having in effect said reshipping practice upon said commodities; but petitioners further aver that Nashville during what is known as the germinating season is the proper place, and the best place for the through movement of grain from the Northwest to the Southeast to be interrupted for the purpose of conditioning and treating the grain. Nashville is 289 miles nearer the grain-growing West and Northwest than is Atlanta, and is about midway the entire haul from the Northwest to the Southeast. It is regarded by grain shippers of the West and Northwest as the danger line at which it is necessary to have the through movement of the commodity interrupted, so that the grain, after inspection, can be properly dried and conditioned.

The grain starts in the higher latitude and colder climate of the Northwest, and it is moved southward into the lower latitude and

warmer climate. The grain frequently starts with moisture frozen in the grain. If it is confined for a sufficient length of time in cars it heats and ferments, and spoiling results. In the through movement of the grain it frequently happens that by the time it
33 gets to the Ohio or Mississippi crossing it does not yet need treatment, and no inspection at that place can develop that treatment is needed. By the time that same grain reaches Nashville it is plainly to be observed that it does need treatment and will spoil if it does not get it, and by the time that same grain should go 289 miles further to Atlanta or any of the other interior jobbing points named it would be absolutely spoiled and destroyed. And in this connection petitioners aver that any supposed salubrity or rarity of climate at Atlanta or any of the other Georgia points is immaterial—the fact that Nashville is the "danger line" results entirely from the length of the haul that the grain has had by the time it reaches Nashville, and the necessity for interrupting the long haul and through movement at said place in order to there apply proper curing and drying processes.

Petitioners aver that the result is that many large grain shippers and sellers in the West and Northwest will not sell grain at all for delivery south of Nashville; and large drying and handling facilities have located themselves at Nashville, and large investments have been made there, upon the faith of the continuance of the stoppage in transit privileges extended by the rail carriers at Nashville for all these years. And to such an extent is this true that Nashville's handling and drying facilities for grain are among the largest in the country, and her sacking facilities are probably the largest of those of any one market in the United States.

Petitioners aver that all the foregoing facts and circum-
34 stances with respect to Nashville being a natural, logical, and proper concentration, distribution, or primary market for grain and grain products, were made to appear to the commission by evidence ample and abundant, and which was not attempted to be contradicted in any sort of way; and petitioners are advised that the exigencies of the grain business, and the necessity for interrupting the through movement of the grain at Nashville for the purpose of conditioning the grain and preventing it from spoiling, thus protecting the shipper, the consumer and the carrier alike, are, of themselves, sufficient to differentiate Nashville from Atlanta and the other Georgia points named, so as to make the granting by the carriers of the stoppage in transit privileges at Nashville lawful, proper, and nondiscriminatory.

X.

Petitioners further show that unless said order of the commission is temporarily stayed or suspended before its effective date, to wit, September 1, 1911, and suspended until the matters presented by this petition can be finally heard and passed upon by this court, the

grain dealers and interests at Nashville will have visited upon them sudden, great, and irreparable damages in the way of the suspension and consequent destruction of their existing business.

There are in Nashville now more than twenty large dealers in grain, grain products, and hay, the bulk of whose business consists of business moving into Nashville from or through the Mississippi and Ohio River crossing points and sent forward into southeastern and Carolina territory under the ancient reshipping practice at the ancient Nashville market. In addition to this there are numerous smaller dealers who are interested in this same through business. All these dealers are members of petitioner, the Nashville Grain Exchange.

35

Petitioners show that the grain business as conducted at Nashville and throughout the country is a business in which there is the sharpest and most aggressive and persistent competition, Nashville being an active and aggressive competitor with Cincinnati, Louisville, Paducah, Hickman, Evansville, Cairo, and other Mississippi and Ohio River crossing points in the supplying of grain, grain products and hay to the consuming Southeast. If the reshipping practice at Nashville is interrupted by the order of the commission herein complained of becoming effective on September 1, 1911, this will mean that Nashville can no longer compete and sell these commodities in the consuming Southeast, in competition with the Mississippi and Ohio River crossing points named—all of which now have and enjoy, and will continue to have and enjoy, the same through rate to the Southeast upon these commodities which Nashville now enjoys by virtue of said reshipping practice; and if, for any time, Nashville grain dealers were deprived of the right to sell these commodities in the consuming Southeast in competition with these Mississippi and Ohio River points, it would result—so aggressive, sharp, and persistent is the competition—that Nashville dealers would lose their customers and trade in the southeastern territory, and when once lost, these customers and this trade could not be regained, in all probability, and if regained, it would be after the expiration of a long-sustained effort, and as the result of vast expense and loss to Nashville dealers. In addition to this, contracts already made in good faith by Nashville dealers with respect to both purchases and sales of grain for future deliveries, which have been made upon the faith of the ancient reshipping practice and a continuance of the rates at Nashville, will thus, without any fault upon the part of Nashville dealers, be made the source of loss and damage to Nashville dealers instead of a source of honest, legitimate profit.

36

Petitioners are advised that this honorable court will be slow to visit upon them such instant and irreparable loss and damage in advance of a fair opportunity to have the decision of this court upon the merits of this petition.

XI.

Premises considered, petitioners pray that the order made and entered by the Interstate Commerce Commission on the 9th day of June, 1911, above complained of, may be set aside and annulled; that the enforcement and execution of said order may be enjoined, restrained, and suspended during the pendency of this suit, and until the final decree is rendered herein annulling and setting aside said order; that a temporary stay or suspension be allowed pending formal application to this court for its order or injunction; that all proper notices and orders be given and entered to the end that petitioners, in pursuance of law, may have the relief, both
37 temporary and permanent, herein prayed; that the United States of America may be made a party defendant hereto; and that a writ of subpœna may be granted commanding it to appear and answer the allegations of this petition, but not under oath (an answer under oath being hereby expressly waived) and to stand to and abide such orders as may be made herein; and that petitioners may have such other and general relief as to the court may seem meet and proper—for all of which, as in duty bound, petitioners will ever pray.

NATIONAL GRAIN EXCHANGE,
By S. S. KERR, *Vice President.*
NASHVILLE BOARD OF TRADE,
By E. S. SHANNON, *Secretary.*
PITTS & MCCONNICO,
Solicitors and Counsel for the Nashville Grain Exchange and the Nashville Board of Trade.

38 UNITED STATES OF AMERICA,
State of Tennessee, county of Davidson, ss:

Personally appeared before me, C. R. Cockle, a notary public in and for the aforesaid State and county, S. S. Kerr and Eugene S. Shannon, who, being first duly sworn, depose and say:

That affiant S. S. Kerr is the vice president of the Nashville Grain Exchange, and that affiant Eugene S. Shannon is the secretary of the Nashville Board of Trade; and that both of said affiants have read the foregoing petition and know the contents thereof, and that the matters therein stated are true.

S. S. KERR.
E. S. SHANNON.

Subscribed and sworn to before me, this 17th day of August, in the year 1911.

My commission as notary public expires on the 7th day of October, 1911.

In witness whereof I have hereunto signed my name and affixed my notarial seal, this 17th day of August, 1911.

[SEAL.] C. R. COCKLE, *Notary Public.*

39 *Notice to Attorney General.*

Returned and filed August 25, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 46.

The President of the United States, to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 25th day of August, A. D. 1911.

[SEAL OF THE UNITED STATES COMMERCE COURT.]

G. F. SNYDER, *Clerk.*
By W. S. HINMAN, *Deputy Clerk.*

Original of above notice and copy of petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 25th day of August, A. D. 1911. Copy accepted by Mrs. B. M. Power for Mr. Blackburn Esterline, Southern Building.

F. J. STAREK, *Marshal.*

40 *Notice to chairman of Interstate Commerce Commission.*

Returned and filed August 25, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 46.

The President of the United States, to Honorable Judson C. Clements as chairman of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 25th day of August, A. D. 1911.

[SEAL OF THE UNITED STATES COMMERCE COURT.]

G. F. SNYDER, *Clerk*.
By W. S. HINMAN, *Deputy Clerk*.

Original of above notice and copy of petition served upon Hon. Judson C. Clements, chairman of the Interstate Commerce Commission, this 25th day of August, A. D. 1911. Accepted by J. H. Howell.

F. J. STAREK, *Marshal*.

41 *Exhibits to petition of Nashville Grain Exchange et al.*

Filed October 17, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners.
vs.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, intervening respondent. } No. 46.

EXHIBITS TO PETITION.

42 "EXHIBIT D" TO PETITION.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of September, A. D. 1908.

Present:

Hon. Martin A. Knapp, Chairman;
Hon. Judson C. Clements,
Hon. Charles A. Prouty,
Hon. Francis M. Cockrell,
Hon. Franklin K. Lane,
Hon. Edgar E. Clark,
Hon. James S. Harlan,
} Commissioners.

W. S. DUNCAN & COMPANY ET AL.
vs.
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al. } No. 1698.

Order allowing petition for intervention.

Upon consideration of an application for that purpose, made by Luke Lea as attorney for the parties named therein,

It is ordered, That the Nashville Grain Exchange, of Nashville, Tennessee, incorporated under the laws of the State of Tennessee, and the Nashville Board of Trade, of Nashville, Tennessee, incorporated under the laws of Tennessee, be, and they are hereby, granted leave to intervene in the above-entitled proceedings, and to appear by counsel at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of said case.

It is further ordered, That a copy of this order be served upon each of the parties to said proceeding.

43 "EXHIBIT E" TO PETITION.

Opinion No. 1026.

Before the Interstate Commerce Commission.

W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al. } No. 1698.

Decided June 24, 1909.

Report and order of the commission.

44 W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al. } No. 1698.

Submitted February 25, 1909. Decided June 24, 1909.

1. The payment of the so-called "elevation allowance" to dealers in hay, grain, and grain products at Nashville, Tenn., is an undue and unlawful discrimination.
2. Where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads, and further, to cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots.
3. Shipments of grain, grain products, and hay are carried from the Ohio and Mississippi River crossings and points north and west thereof to Nashville at local rates, and quantities of these articles are afterwards reshipped and rebilled from Nashville to points in the Southeast at the local rate, but the difference between the sum of the locals thus collected and the through rate from crossing point to ultimate destination is refunded to the shipper through the claims department of the railroad company. There is no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Nashville is named, and upon delivery of grain to that point it loses its identity and is in every respect a local shipment; *Held*, That the circumstances and conditions prevailing at Nashville are not so dissimilar from those prevailing at other points in the Southeast as to warrant a continuance of this privilege at Nashville without undue discrimination, to the prejudice and disadvantage of points in that territory not having a similar privilege; *Held further*, That this privilege operates as a device by which traffic may move at less than the lawful tariff rate.

Wimbish, Watkins & Ellis for complainants.

S. F. Andrews for Nashville, Chattanooga & St. Louis Railway Company; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and B. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; Western Railway of Alabama; and the Southern Railway Company.

Perkins Baxter for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

Luke Lea for Nashville Grain Exchange and Nashville Board of Trade, of Nashville, Tenn., interveners.

45

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner.*

This complaint is brought by a large number of commercial houses located at Atlanta and other Georgia cities who allege that the carriers have granted to Nashville, Tenn., through the adjustment of rates, rules, and regulations, undue preference and advantage in the handling of grain, grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, and thereby unjustly discriminate against complainants, and others similarly situated, in that Nashville is able to deliver grain and grain products in southeastern territory under such unduly preferential rates and privileges that cities within that territory can not enter into competition.

The practices of the carriers complained of are:

(a) The payment by the railway companies of elevation charges at Nashville.

(b) The application of the any-quantity rate on grain and grain products from Ohio and Mississippi River crossings and Nashville, and points related thereto, to southeastern destinations.

(c) What is known as the rebilling or reshipping privilege at Nashville, with its incidents.

The Nashville Grain Exchange and the Nashville Board of Trade have intervened in this case in support of the retention at Nashville of these privileges.

ELEVATOR ALLOWANCE.

In connection with the reshipping of grain at Nashville, there is an allowance of three-fourths of a cent per 100 pounds by the railroad companies in payment for so-called elevation. The record shows that the practice at Nashville is to pay this allowance not only for elevation, but in effect for unloading the grain in such manner as may be most convenient for the dealer. The latter is paid this

allowance for grain unloaded or sacked at his store or warehouse, irrespective of whether there is any elevation involved or whether the sacking is done by hand or by machinery, when the shipment moves out of Nashville.

The present adjustment of defendants' rates from Ohio and Mississippi River crossings to points of ultimate destination in the Southeast is made up of a combination of the through rate from the crossings to a jobbing point, such as Atlanta, plus the local from Atlanta. To certain circumscribed territory a dealer at the Georgia jobbing point can purchase a car of grain at a crossing point, bring it to Atlanta and ship it on to his customer at the same through rate as would be applied to a similar shipment by a dealer at a crossing point, or at Nashville. This equality in cost, however, relates only to the transportation charges, and is also restricted to a comparatively limited number of points. It would be impracticable for an Atlanta dealer to send a car through even to these points without stopping it at Atlanta for the purpose of inspection,
46 sacking, etc., and it is partly in connection with certain incidental charges that he is placed at a disadvantage with a crossing point or Nashville. The Atlanta dealer does not receive any elevation allowance as does the Nashville dealer, and in addition, after unloading the car at his own expense, is required to pay certain switching charges.

Elevation allowances such as are paid at Nashville have been considered by the commission on several occasions and we have found that there was no way of controlling the evils and irregularities necessarily accompanying such allowances, and for that reason they have been condemned. Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. Rep., 90; Traffic Bureau Merchants' Exchange v. C., B. & Q. R. R. Co., 14 I. C. C. Rep., 317. It does not appear that the practice as carried on at Nashville is different in any essential particular from that which we held to be illegal in the cases just referred to, and it can not be doubted that it constitutes an unlawful discrimination against the complainants, who are compelled to perform a similar service at their own expense. An order will therefore be issued prohibiting the carriers from further paying this so-called elevator allowance.

ANY-QUANTITY RATE.

It appears from the record that throughout the country generally a different rate is applied on carloads from that applied on less than carloads in the transportation of traffic of the character involved in this complaint. There is an exception to this in what is known as southern classification territory, where the any-quantity rate prevails. Even in this territory a differential is in effect in Mississippi and Tennessee and parts of Alabama, and in Georgia on the Western & Atlantic Railroad north of Atlanta. However, the carriers contend that these exceptions are due to competitive conditions.

Complainants request the commission to order a differential as to carloads and less than carloads on this traffic to southeastern territory, on the ground that the carload shipper is overcharged because he gets less service than and pays the same money as the man who ships in less-than-carload lots; and that this violates the primary object sought to be obtained by the interstate-commerce act: that is, equality of treatment to all shippers. This feature of the complaint is not directed against Nashville alone, but is of broader scope, and includes all movements of grain through Ohio and Mississippi River crossings to points in southeastern territory.

At the hearing considerable testimony was taken to prove that the handling of traffic in less-than-carload lots was more expensive to the carrier than handling it in carloads. Defendants admit the general truth of this proposition. However, while the commission will take notice of this fact it must also be borne in mind that the comparative cost of services to carriers can not be made the sole basis of rate making. Planters' Compress Company v. C., C., C. & St. L. Ry. Co., 11 I. C. C., 382, 405; I. C. C. v. C. G. W. Ry. Co., 141 Fed. Rep., 1003, and cases there cited.

47 The matter of establishing this differential has been agitated for a long time throughout southeastern territory. The carriers at one time favorably considered putting it into effect, and did actually do so for a short period, but it was discontinued for the reason that the State commissions in several of the Southern States require the maintenance of the any-quantity rate, and therefore it was impracticable to continue a differential between carload and less-than-carload shipments of interstate traffic. The sole contention of the carriers with respect to this feature of the complaint is its impracticability, and in this connection an illustration was given to show that the adoption of a differential on interstate traffic would result in increasing the rate on such shipments in less than carloads without a corresponding increase on intrastate less-than-carload shipments as long as the State commissions require the any-quantity rate on intrastate shipments. The differential would thus discontinue the uniform application of rates to both interstate and intrastate shipments. Less-than-carload shipments from point to point in a State would continue to move on the same rates as carloads. When a State line was crossed and the increased rate applied on the less-than-carload shipments, there would be an increase on such shipments sufficient to absolutely confine each State's business within its own borders and thus the interstate jobber would be eliminated in favor of the intrastate jobber.

There are, however, other and graver considerations with respect to this matter which exercise a compelling force upon the commission. It is true the commission has held that differentiation by the carriers of carloads from less than carloads in the application of rates may be warranted under certain conditions. Here, however, we are asked to enter an affirmative order establishing a differential. What would be the effect upon all the business interests involved in this

traffic should the commission take such action? No doubt its effect upon the jobbers at southeastern points would be beneficial; traffic would move into the Southeast in such manner as to give the longest possible haul in carloads to the local dealers, who, securing these long hauls at carload rates, would be the beneficiaries. Other classes who would be affected by the change would be the small dealers and consumers, and it appears that the necessary operation of such a change would be to cut off these classes from purchasing in small quantities at Nashville and Ohio River points and compel them to deal with jobbers in their immediate vicinity, who would purchase in large enough quantities to secure the benefits of the lower rates on the long carload haul from the Ohio River and Nashville.

The entire record points to the fact that a differential on this traffic would have the effect of enhancing the price of these products to the consumer. The position taken by the railroads is that they have no objection to the establishment of a differential if a practical way can be found of accomplishing it, and provided the differential is brought about by an advance in the less-than-carload rates. It further appears that heretofore when this matter was agitated certain of the defendants considered it advisable to leave it to the commission to say whether or not there should be a differential, always upon the assumption that this would be effected by an increase of the less-than-carload rates rather than by reductions of carload rates. Yet
48 the carriers at that time admitted that they could not undertake to advance the less-than-carload rates primarily because such action would create the anomaly in the application of interstate and intrastate rates to which we have already alluded.

The record shows that consumers are now able to buy, and do buy, as cheaply in Nashville and at the river crossings as can the dealers in Atlanta; that the establishment of this differential would concentrate business at southeastern points; and it might reasonably be concluded from this that through the changes which this differential would bring about there would frequently be interposed between the consumer and his supply the profit of one or more middlemen, unless the retailer or consumer continued to buy at the larger markets, in which case he would frequently be compelled to pay the higher rate to be applied under the proposed adjustment on less-than-carload shipments.

From the facts appearing, it is clair that if a differential on this traffic is ordered, an effort will be made to maintain the present rates upon carload shipments, and a higher rate will be made to apply on less-than-carload shipments. In the event such a readjustment should be upheld the cost to the retailer and consumer would necessarily be increased.

The any-quantity rate is paid indiscriminately by all shippers in this section, and therefore there can be no valid claim of unjust discrimination between localities, nor do we understand that complainants make any such allegation. On the other hand, it is nowhere stated that the any-quantity rate is per se unreasonable. All

that complainants are contending for is a differential, whether the result may be an advance or a reduction of the present rates. Complainants assert that they have an inherent right to the jobbing business throughout the territory adjacent, or, as they say, "naturally tributary," to them. As one witness stated it, "the territory contiguous to Augusta belongs to Augusta, and Augusta ought to have it, and I don't think Savannah, Macon, Atlanta, or Nashville has any right to it."

A railroad can not be compelled, as prayed in this case, or even permitted to adopt a system of rate making which enables a large dealer to drive a smaller dealer out of the market. We must have some other motive upon which to act in a matter of this kind than that the trade of a particular community is a vested right belonging to any particular class in that community. We are not permitted so to narrow our view of all the interests involved as to look only to the interests of a particular class in the community, and this for the sole purpose of vesting in that class what they claim to be their inherent rights, more especially when the enjoyment thereof is to be at the expense of the community at large.

The effect of an order prescribing a differential on less-than-carload quantities would be to place a tax on retailers and consumers in order that jobbers in this southeastern territory might realize a profit in competition with Nashville jobbers. If it were merely a question of adjusting the equities between the jobbers of Nashville and complainants, this matter would be greatly simplified, but our duty requires that we consider every interest which might be
49 affected by our order, and where it seems that action on our part would have a tendency to adversely affect the interests of the section as a whole, we are not justified in granting the relief prayed for by a comparatively small class, as in the case before us.

REBILLING OR RESHIPPING.

Under the rebilling or reshipping privilege accorded at Nashville on shipments of grain, grain products, and hay from Ohio and Mississippi River crossings to points in the Southeast the through rates from the crossings to ultimate destinations are applied. Shipments of grain from the crossings move into Nashville, where they are unloaded, elevated, or sacked, and at any time within six months they are reshipped on to points in the Southeast. The net freight charge for the entire movement is based on the through rate from the crossings to final destination. A shipment moving from Evansville to Atlanta via Nashville pays the local 10-cent rate to Nashville, and the local rate of 17 cents, Nashville to Atlanta, or a total of 27 cents. As the through rate from Evansville to Atlanta is 24 cents, the 3 cents representing the difference between such through rate and the combination based on Nashville is paid back to the shipper through the claims department of the railroad company. When the shipper desires to reship at Nashville he takes the expense bill, covering the in-

bound movement, to the agent of the carrier; and the outbound shipments are charged against that expense bill; he thereupon gets a bill of lading showing the origin of the property at Evansville. This is the practice followed by the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis employs a substantially similar practice, the net result of which is to apply the through rate via Nashville from the river crossings to final destination.

It is claimed by defendants that reshipping at Nashville was inaugurated many years ago for the purpose of protecting the revenues of the Louisville & Nashville Railroad, the Nashville & Northwestern, and the Nashville, Chattanooga & St. Louis Railway against the competition of boats on the Cumberland River; that the location of Nashville on the Cumberland River, a navigable stream, was sufficient to establish not only a basis of rates from the Ohio and Mississippi River crossings to Nashville and southeastern territory, but also to establish the custom of reshipping at Nashville; that the original route to the Southeast consisted of boats on the Cumberland River to Nashville and the Nashville, Chattanooga & St. Louis Railway from there on. It therefore became necessary, in order to protect the revenues of the rail carriers, to either establish very low rates from Ohio River crossings to Nashville proper or to establish reshipping arrangements at Nashville to southeastern points. By taking the latter course there was accomplished the double purpose of securing the movement of traffic destined to the Southeast in competition with boats on the Cumberland River, and of protecting the revenues of the rail lines on traffic destined to Nashville proper.

The record shows that less than 1,000,000 bushels of grain were transported from Ohio and Mississippi River crossings via
50 boat to Nashville at rates ranging from 7 to 9 cents per hundred pounds during the past season, but it was asserted that if a rate of 10 cents per hundred pounds were maintained by the rail carriers from the Ohio River to Nashville there would spring up sufficient boat tonnage to handle the entire grain traffic from the Ohio River into Nashville, destined to southeastern territory. Of course, this grain handled into Nashville by boat does not have the benefit of the reshipping privilege.

The complaint is that this practice of reshipping constitutes an illegal preference in favor of dealers in hay, grain, and grain products at Nashville, and against such dealers in the Southeast; and furthermore that reshipping is a device by which less than the lawful rate is paid.

Atlanta dealers are at a disadvantage when it comes to engaging in business with such points as Griffin and Newman, Ga. The through rate from Louisville to Griffin is 29 cents per 100 pounds, while the rate to Atlanta plus the rate to Griffin is 32 cents per 100 pounds, so that if the Atlanta dealer wishes to keep the grain over in Atlanta for the purpose of inspection, weighing, sacking, etc., he is at a disadvantage of 3 cents per 100 pounds. Griffin is 43 miles south of or beyond Atlanta. The defendants claim that in cases

where this cheaper rate is applicable the points that get the benefit of it have been made junction or common points by either the State railway commission or the Interstate Commerce Commission. It is not seriously urged by complainants that this adjustment is unduly preferential to these junction points or that it arose out of any other cause than advantages of location. We do not deem it necessary to enter upon any further discussion of this phase of the case.

Witnesses for complainants refer to a privilege given to shippers at Nashville of granting them ten days' free storage, and it was asserted that if grain was moved out within ten days no charge was made for storage. The defendants deny that they permit any such arrangement with shippers at Nashville, and assert that they require the discharge of cars at Nashville just the same as they do at Atlanta and other points.

The defendants assert that Nashville does not compete with Atlanta and similar points, but being a primary grain market, competes with similar markets, such as Cairo, Evansville, and Louisville. There is much difference of opinion as to what constitutes a primary grain market.

It is maintained by defendants that there is a difference between the circumstances and conditions surrounding this traffic at Nashville, and at Atlanta and other southeastern points; that since the early days of railroads Nashville has been the gateway through which this traffic has moved into the southeast, and her location on the Cumberland River contributed to the establishment of this gateway; moreover, that Nashville is located adjacent to a grain-growing section.

It was also contended by defendants that the practice of reshipping, as carried on at Nashville, prevails to a great extent throughout the country in connection with the transportation of grain through so-called primary grain markets. Defendants' witnesses, how-
51 ever, were unable to give a single instance where the conditions are the same as at Nashville with respect to the practice of reshipping or rebilling. It is true the cities located at the river crossings are able to avail themselves of the privilege of elevating grain and subsequently reshipping it on to destination points in the Southeast without any increase in the transportation charge from the point of origin to point of destination. This is not due, however, to any privilege of reshipping or rebilling granted to these points, but is possible by reason of the fact that rates from points of origin to points of destination are made up of a combination based on the river. One witness did state, with regard to the movement of grain into the Southeast from a certain section of Illinois, that the carriers shrink the rate south of Louisville 2 cents in order to equalize the rates upon similar movements through Cairo. We shall, however, confine ourselves to a discussion of the practices and privileges at Nashville and complained of in this case.

It is contended by defendants that rebilling or reshipping is on the same basis as milling in transit and similar privileges. There

is no complaint before us in this case against milling in transit, but it appears from the record that the privilege of milling in transit is accorded uniformily throughout the southeastern territory and is in no sense applied to Nashville or any other particular point alone.

We are not convinced that the circumstances and conditions under which the reshipping privilege is accorded at Nashville are so dissimilar from those obtaining at the other points involved in this traffic as to justify giving it our sanction on that ground. However, there are other aspects independent of this which lead us to regard this privilege with disfavor.

Illustrating the second feature of the complaint as to the alleged illegality of this privilege, the following example is given: A Nashville dealer buys 2 cars of grain, 1 at Memphis and 1 at Louisville. He pays, up to Nashville on a Memphis car, 11 cents per 100 pounds and on the Louisville car 10 cents. Should this Memphis car burn after being put in the warehouse, or be sold at Nashville, he would have two expense bills and one car of grain. Should he sell a car at Atlanta, the Nashville merchant would naturally use the Memphis bill, which shows a payment of 11 cents, paying the balance of the through rate from Memphis to Atlanta of 9 cents. He has, therefore, shipped the Louisville car to Atlanta for a total of 19 cents, when the through rate from Louisville to Atlanta is 24 cents and the combination of locals 27 cents. It is further alleged that as considerable grain is consumed in Nashville there is always a surplus of expense bills which may be manipulated in order to secure a cheaper rate than that provided in the tariffs. In answer to this defendants say that the operation of the reshipping privilege, as described in this example, is limited by the fact that the Memphis car of grain is worth more to the dealer at Nashville than the St. Louis car by reason of the difference in the freight rate, and, therefore, Memphis grain is not sold at Nashville proper, but is all reshipped to the Southeast. It is to be noted that the tariffs of the carriers contain a rule which prohibits trading in expense bills, and it is hardly
52 probable that such a rule would appear if the manipulation of expense bills is impossible, as contended by defendants.

While this manipulation of expense bills may not be practiced to the extent apprehended by complainants, we may remark that prohibitions of law are not invariably directed against illegal acts because they may be numerous; a statute may be considered equally necessary by the legislature to prevent sporadic or isolated acts in contravention of public policy. A practice or privilege which permits the movement of a simple shipment at less than the rate lawfully applicable to such movement is one which the commission has, under the law, no alternative but to condemn.

In considering a practice at Kansas City similar to the one under consideration (Alleged Unlawful Rates and Practices, 7 I. C. C., 240), it was found that the practice of handling grain in connection with this privilege was manifestly open to many abuses. On several occasions the commission has considered practices of a more or less

similar nature and has uniformly regarded them with disfavor. In the case above referred to the finding was based upon the fact that the movement upon which the through rate was applied was in no essential sense a through movement, and we find the same to be true with respect to rebilling or reshipping at Nashville. The grain upon its arrival at Nashville loses its identity and in every respect may be regarded as a local shipment. There is hardly a single incident of a through shipment involved in the transaction—the bill of lading is local, the rate is local, and there is nothing upon paper connected with the transaction indicating that the grain is to be carried beyond Nashville. If it is the intention to carry it beyond, there is no present idea as to the point of destination.

We are of the opinion that the reshipping or rebilling privilege and the application of rates thereunder obtaining at Nashville is an illegal device by means of which grain, grain products, and hay may be transported at less than the tariff rate applicable thereto; and further, that it gives to Nashville undue and illegal preference and advantage and subjects other points in the Southeast to unjust and unreasonable prejudice and disadvantage.

An order will be entered in accordance with the views herein expressed.

53

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 24th day of June, A. D. 1909.

Present:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
} Commissioners.

W. S. Duncan & Company; A. P. Morgan Grain Company; J. D. Frazier & Company; Adams-Whitney Company; A. L. & M. W. Fain; J. J. & J. E. Maddox; Charles E. Caverly; R. W. Davis, of R. W. Davis & Company; A. C. Woolley & Company; McCord-Stewart Company; Rogers & Harwell; F. W. Kelley Company; Deaton Grocery Company; Dan Joseph Company; G. Y. Banks & Company; The Macon Grocery Company; A. B. Small & Company; Adams Brothers Company; Merritts & Company; F. W. Hazelhurst Company; Adams & Johnston; Solomon & McRae; R. T. Birdsey & Company; George A.

McArthur; Parker-Willis Company; Cordele Grocery Company; Albany Grocery Company; Tift & Peed Grocery Company; A. S. Pendleton Company; Dalton Grocery Company; Marion Curry; Orr-Smith Grocery Company; Brandon & Dyer; Gallaher Grocery Company; Simpson Grocery Company; J. R. Ragan; J. M. Bradshaw & Company; George F. Chidsey and Carey T. King; Talmadge Brothers; Webb & Crawford; G. H. Hulme; and Epps-Wilkins Company } No. 1698.

v.

The Nashville, Chattanooga & St. Louis Railway; The Atlantic Coast Line Railroad Company; Louisville & Nashville Railroad Company; Atlanta, Birmingham & Atlantic Railroad; Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway; Alabama Great Southern Railroad; Georgia Southern & Florida Railway; Illinois Central Railroad Company; Central of Georgia Railway Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers; Atlanta & West Point Railroad Company; and Western Railway of Alabama. The Nashville Grain Exchange and Nashville Board of Trade, interveners.

54 This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the day hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the commission having found in said report that the granting to dealers at Nashville, Tennessee, certain so-called elevation allowances is unduly discriminatory, and, further, that the privilege of reshipping hay, grain, and grain products from Nashville is unlawful, and gives undue and unreasonable preference and advantage to dealers in hay, grain, and grain products located at Nashville, and subjects complainants to undue and unreasonable prejudice and disadvantage, which elevation allowances and reshipping privilege have been more particularly described in the report made and filed in this case:

It is ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per 100 pounds or any other sum as an allowance or compensation for service rendered in the elevation, unloading, or handling of grain, grain products, and hay at Nashville.

It is further ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products, and hay at Nashville the privilege of reshipping or rebilling said products from Nashville, as particularly described in the report herein.

And it is further ordered, That tariffs withdrawing said allowance may be effective upon three days' notice to the public and the Interstate Commerce Commission given in the manner required by law, and must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case.

55 "EXHIBIT F" TO PETITION.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3rd day of June, A. D. 1910.

Present:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Commissioners.

W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. } No. 1698.

Whereas, on June 24, 1909, the commission in the above-entitled cause, after complaint and full hearing, made and entered its order therein, as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the day hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the commission having found in said report that the granting to dealers at Nashville, Tennessee, certain so-called elevation allowances is unduly discriminatory; and, further, that the privilege of reshipping hay, grain, and grain products from Nashville is unlawful, and gives undue and unreasonable preference and advantage to dealers in hay, grain, and grain products located at Nashville, and subjects complainants to undue and unreasonable prejudice and disadvantage, which elevation allowances and reshipping privilege have been more particularly described in the report made and filed in this case.

"It is ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per 100 pounds or any other sum as an allowance or compensation for service rendered in the elevation, unloading, or handling of grain, grain products, and hay at Nashville.

"It is further ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products, and hay at Nashville the privilege of reshipping or rebilling said products from Nashville, as particularly described in the report herein.

"And it is further ordered, That tariffs withdrawing said allowance may be effective upon three days' notice to the public and the Interstate Commerce Commission given in the manner required by law, and must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case."

And whereas, the effective date of said order was postponed, first until January 1, 1910, and again until April 1, 1910, and
56 finally until further order of the commission, which postponements were made for the purpose of holding the order in abeyance so far as it related to transit and reshipping privileges and practices at Nashville, Tennessee, in connection with the transportation of grain and hay, until the completion of an investigation by the commission into practices of this sort and the announcement of its conclusions based upon such investigation, in order that such modification of, or addition to, said order as might be necessary to prevent unjust discrimination as between places with respect to such transit privileges and practices, might be made upon the completion of the investigation aforesaid,

And whereas, that investigation has been concluded and the views of the commission with respect to the privileges and practices in question have been announced in the report therein, entitled, "In re Substitution of Tonnage at Transit Points."

The defendant carriers in this case are hereby notified and required to show cause before the commission at Washington, D. C., at 10 o'clock a. m., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. v. Nashville, Chattanooga & St. Louis Railway and others, heretofore referred to, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating, in any respect whatever, between Nashville and Atlanta and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products, and hay, upon the ground that such discrimination is undue, unreasonable, and unlawful.

It is ordered, That a copy of this order be forthwith served upon each of the parties to this case.

A true copy:

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY, *Secretary.*

57 "EXHIBIT G" TO PETITION.

Opinion No. 1247.

Before the Interstate Commerce Commission.
No. 3002.

In the matter of the substitution of tonnage at transit points.
Decided May 3, 1910.

Report of the commission.

58 No. 3002.

In the matter of the substitution of tonnage at transit points.

Submitted March 5, 1910. Decided May 3, 1910.

1. The various investigations held by the commission in regard to the matter of the substitution of tonnage at transit points have failed to demonstrate that the commission's conference ruling, No. 76-A, relative to substituting tonnage at transit point was too strict; but they have demonstrated that the various practices outlined in the report herein have resulted in the violation of published rates, to the injury of shippers not taking advantage of such practices. Continuance of such abuses will compel the commission to resort to criminal prosecutions, including both shippers and carriers, to secure obedience to the law.
2. The commission does not condemn the transit privileges as such, but holds that the responsibility for safeguarding and policing the transit privileges, to the end that the lawfully published rate shall be collected, rests entirely upon carriers; shippers, however, will not be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of carriers to collect such rates.
3. It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges, and they may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates.
4. If carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now, while the elimination of these arrangements will decrease their expense of bookkeeping and supervision and will be for the benefit of all the industries affected.
5. If the carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers.

John H. Marble for the commission.

Henry M. Allen for Millers' National Federation.

Edward Andrews, J. C. Murray, C. B. Pierce, W. W. Hopkins, and F. M. Bunch for Chicago Board of Trade.

G. C. Bailey for E. W. Bailey and Company.
Charles Barham for Nashville, Chattanooga & St. Louis Railway.
Perkins Baxter for lines in Southeastern Territory.
L. V. Beatty for Kansas City Southern Railway Company.
John H. Bell for Bell-Duff Commercial Company.
G. P. Biles and T. C. Powell for Cincinnati, New Orleans & Texas Pacific Railway Company.
Harry H. Bingham for Bingham Hewett Grain Company.
Claude H. Birkett for Birkett Mills.
R. A. Brand for Atlantic Coast Line Railroad Company.
Alfred Brandeis for Brandeis & Son.
H. C. Burnett for Lehigh Valley Railroad Company.
R. L. Callahan for Callahan & Sons.
R. W. Chapin for Buffalo Corn Exchange.
Samuel Claggett and J. R. Ruffin for Norfolk & Western Railway Company.
59 R. N. Collyer for Uniform Classification Committee.
W. T. Cornelison for Peoria Board of Trade.
Charles M. Cox for New England Millers' Committee.
George H. Crosby for Chicago, Burlington & Quincy Railroad Company.
Milton L. Cushing for J. Cushing & Company.
John B. Daish for American Hay Company.
C. E. Dewey for Central Vermont Railway Company.
F. C. Dillard and J. A. Munroe for Union Pacific Railroad Company and others.
George D. Dixon, William Hodgdon, and Robert C. Wright for Pennsylvania Railroad Company.
M. F. Doyle for Cleveland Grain Company.
Edward D. Evans for Evans Milling Company.
George H. Evans for Indianapolis Board of Trade.
F. P. Eyman and S. A. Lynde for Chicago & North Western Railway Company.
B. M. Flippin, E. B. Boyd, J. C. Jeffery, and H. J. Campbell for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.
Thomas Forman for Thomas Forman Company.
H. W. Forward and Henry Adams for Erie Railroad Company.
G. J. Gibbs for Texas Grain Dealers' Association.
Gus Giesecke for Guenther Milling Company.
A. P. Gilbert and E. D. Hotchkiss for Chesapeake & Ohio Railway Company.
J. S. Gillies and D. D. Earing for Gillies Brothers.
A. L. Goetzmann for Millers' National Federation and others.
D. M. Goodwyn and A. R. Smith for Louisville & Nashville Railroad Company.
Lincoln Green, C. B. Northrop, and T. C. Powell for Southern Railway Company.
E. R. Guenther for Pioneer Flour Mills.

C. Haile for Missouri, Kansas & Texas Railway Company.
E. J. Hana for Northeastern Grain Dealers' Committee.
F. H. Hartwell for H. Verhoeffler Company.
Joseph Hattendorf and D. W. Longstreet for Illinois Central Railroad Company and others.
George S. Hobbs for Maine Central Railroad Company.
F. B. Houghton for Atchison, Topeka & Santa Fe Railway Company.
H. C. Hudgins for Norfolk & Southern Railway Company.
A. J. Hunt for Millers' National Federation.
D. O. Ives and E. V. Mitchell for Boston Chamber of Commerce.
William S. Kallman, Francis La Bau, James Webster, and O. E. Butterfield for New York Central Lines.
L. H. Kentfield for New York, New Haven & Hartford Railroad Company.
J. C. La Coste and M. L. Bell for Chicago, Rock Island & Pacific Railway Company and others.
J. C. Lincoln for St. Louis Merchants' Exchange.
60 John W. Loud and George W. Kretzinger for Grand Trunk Railway system.
C. C. McCain for Trunk Line Association.
J. D. McLaurin and David N. Skillings for Skillings, Whitneys & Barnes Lumber Company.
E. J. McVann for Commercial Club of Omaha.
J. B. Magee for Grain Shippers of Cairo.
J. R. Mills for Kansas City Southern Railway Company.
L. F. Moore for Wichita Transportation Bureau.
G. C. Mountcastle for Fort Worth Freight Bureau.
W. J. Mullin for Delaware & Hudson Company.
H. M. Newlin for Pennsylvania Steel Company.
E. A. Niel for Buffalo & Susquehanna Railway Company and others.
W. L. O'Dwyer for New Orleans, Mobile & Chicago Railroad Company.
Gibson Oliver for Oneonta Milling Company.
C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.
R. M. Parker for American Sugar Refining Company.
W. A. Parker, C. S. Wight, and H. C. Smith for Baltimore & Ohio Railroad Company.
H. M. Pearce for Chicago, St. Paul, Minneapolis & Omaha Railway Company.
J. M. Perry for Cutler Company.
H. E. Pierpont and William Ellis for Chicago, Milwaukee & St. Paul Railway Company.
R. E. Pratt for Buffalo Corn Exchange.
G. H. Purvis for Atlanta & St. Andrews Bay Railway Company.
P. P. Rainer for Joint Rate Inspection Bureau.
E. S. Rea for Rea-Patterson Milling Company.

Edgar J. Rich for Boston & Maine Railroad.
Lincoln Richards for Quaker Oats Company.
F. M. Rogers for Medlin Milling Company.
J. L. Seager and A. B. Wallace for Delaware, Lackawanna & Western Railroad Company.
F. O. Shane and G. C. Shane for Shane Brothers Wilson Company.
Thomas G. Smiley for Western Maryland Railway Company.
C. B. Stafford for Memphis Grain & Hay Association.
E. S. Stephens for Chicago & Eastern Illinois Railroad Company.
Sidney St. F. Thaxter for Thaxter & Company.
Dean K. Webster for H. K. Webster Company.
L. D. Wehle for shippers from Ohio River gateways.
B. F. Wilkinson for Wilkinson, Gaddis & Company.
H. G. Wilson for Kansas City Board of Trade and millers.
F. H. Wood and E. K. Voorhees for St. Louis & San Francisco Railroad Company and others.
H. W. Woolf for Southern Weighing & Inspection Bureau.
D. K. Hamilton and C. T. Ballard for Ballard & Ballard Company.
Hawkins & Franklin for El Paso & Southwestern system.
W. H. Mauss for National Wool Warehouse & Storage Company.
61 Donald Rose for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and Indianapolis Southern Railroad Company.
Moses Rothschild for Davenport Grain Exchange.
George A. Schroeder for Milwaukee Chamber of Commerce.
W. P. Trickett for Minneapolis Traffic Association.
A. G. Tyng for Peoria Board of Trade.
A. H. Brenner and J. P. Daughty for Augusta Cotton Exchange and Board of Trade.
Charles L. Gay for Farmers' Compress and Warehouse Company.
J. L. Hawley for Gulf and Ship Island Railroad Company.
C. B. Howard for Inman, Akers & Inman Southeastern Cotton Buyers' Association.
Edward Karow and John Nisbet for Savannah Cotton Exchange.
Laslie E. Kieffer for Moyse & Holmes.
James Menzies for Atlantic Coast Line Railroad Company.
Thomas Nesbitt, W. C. Fenn, and S. B. Brown for Georgia Cotton Company.
C. H. Pearson and E. T. Steele for Alabama Great Southern Railroad Company.
T. B. Stackhouse for Standard Warehouse Company.
Lawrence Weil for Lehman Weil & Company.
W. A. Winburn and Charles T. Airey for Central of Georgia Railway Company.
W. P. Bowles for Wilson Ward Company.
S. M. Bray for Williams & Fitzhugh.
F. M. Crump for F. M. Crump & Company.
James S. Davant for Memphis Freight Bureau.

Paul Dillard for Dillard & Coffin Company.
A. L. Foster for J. W. Thompson Lumber Company.
G. C. Hanson for Gulf Compress Company.
C. D. Jordan for Southern Cotton Oil Company.
R. O. McCormack for Fort Worth Freight Bureau.
Joel E. Wynne for Wynne, Love & Company.
W. F. Yates for Yates, Donelson & Company.
L. M. Wilson for New York State and Pennsylvania grain dealers.
Thomas H. Shepard for Shepard & Morse Lumber Company.
C. S. Belsterling, E. J. Booth, Otto Gresham, Frank Kell, Frank L. Sullivan, T. G. Williams, R. R. Shiel, N. H. Burt, James P. Ferrall, J. T. Jennings, S. F. Parrott, John S. Turner, John Wade, W. S. Darnell, W. E. Gage, H. J. Hasenwinkle, C. C. McChord, H. H. Maury, John Myers, J. P. Norfleet, G. E. Patterson, James E. Stark, and E. Taenzer.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner:*

This inquiry was initiated by the commission on its own motion in response to numerous complaints from shippers to the effect that competitors at transit points were by various substitutions evading payment of published rates. In response to these complaints on June 25, 1908, the commission issued the following ruling:

62 "A milling, storage, or cleaning-in-transit privilege is established on the theory that the commodity may be stopped en route for the enjoyment of such privilege, and the commodity or its product be forwarded under the application of the through rate from original point of shipment. It is not expected that the identity of each carload of grain, lumber, salt, etc., can or will be preserved, but in the opinion of the commission it is unlawful to substitute at the transit point, or forward under the transit rate, tonnage or commodity that does not move into that point on that same rate."

Practically no attention was paid to this ruling by either shippers or carriers. The complaints grew in number, however, and the abuses increased rather than decreased in volume. Therefore, on June 29, 1909, the commission issued its Conference Ruling No. 76–A, as follows:

"76–A. SUBSTITUTING TONNAGE AT TRANSIT POINT (adopted June 29, 1909).—A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward on transit rate commodity that did not move into transit point or transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution

that would impair the integrity of the through rate. It is not practicable to require that the identity of each carload of grain, lumber, salt., etc., be preserved, but, in the opinion of the commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley, nor may shingles be substituted for lumber, or lumber for shingles, nor may rock salt be substituted for fine salt. nor fine salt for rock salt; likewise oak lumber may not be substituted for maple lumber, nor pine lumber for either oak or maple, nor may hard wheat, soft wheat, or spring wheat be substituted either for the other. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the commission will take of such abuses as they arise.

"To the end that abuses now existing at transit points may be eliminated, carriers will be expected to conform their transit rules and their billing to the suggestions of this rule. In the event of the failure of any carrier so to do, reductions of legal rates caused by transit abuses will be regarded as voluntary concessions from legal rates."

Following this ruling numerous protests were received from shippers at transit points (particularly from millers at milling-in-transit points) to the effect that it was too strict and that its application would destroy all the benefits of transit privileges. The shippers making these protests petitioned the commission to make an investigation into the matter of substitution of tonnage in transit, and asked that they be permitted to explain their practices and set forth their necessities. In response to these protests and requests the present inquiry was instituted.

Hearings in this matter have been held at Washington, D. C.; Chicago, Ill.; Montgomery, Ala.; Memphis, Tenn.; and Boston, Mass. At these hearings all parties concerned have been invited to come forward and give the commission all information in their possession. The hearings have been largely attended by both shippers and representatives of carriers, and the commission is persuaded that the evidence given has been generally frank and full and that the record in this case fairly presents transit practices.

63 The testimony shows that substitution by which published rates are defeated is the rule at all transit points where that opportunity exists. The testimony has shown that published rates upon grain are defeated by substitutions at every grain market enjoying transit privileges, with the possible exception of the New England markets reshipping into New England territory. Grain shippers, however, are not the only delinquents. At Detroit it was found that through rates upon lumber are largely defeated by substitution. At Milwaukee rates upon salt are likewise defeated. At various points in the South rates upon cotton are defeated.

Substitution of one commodity for another: The most apparent abuse shown by the inquiry is the substitution of one commodity for another. At Chicago, for instance, it was found that oats had been forwarded as a continuation of the through transportation of shipments of barley. It is evident that any reduction of the rates obtained by such a practice is in violation of the act to regulate commerce. Similarly, instances of substitution of corn for oats, of wheat for barley, etc., have been found. In such cases the substitution is so evidently that of one commodity for another commodity that no difference of opinion as to the propriety of the practice can be said to exist.

The substitution of commodities which is most dangerous to the integrity of rates, however, is more insidious in form than the above. By investigating various shipments through Chicago, for instance, it was found that shipments of red winter wheat moving from Chicago to points in southeastern territory enjoyed transit privileges based upon shipments of hard winter wheat into Chicago from Kansas City, Mo. The testimony shows that no red winter wheat could be secured at the points in Kansas shown by the Kansas City billing as the origin of the shipments of hard winter wheat. It was also shown that a very large proportion of the red winter wheat reaching Chicago market comes from points south and southeast of the city of Chicago, not enjoying through rates to southeastern territory. It was evident, therefore (and this was admitted by a member of the very firm which made this substitution of soft wheat for hard wheat), that by the manipulation the rate of the railroad operating from Kansas City to Chicago had been defeated 3½ cents per 100 pounds, while the rate of the road operating from Chicago to the Ohio River had been defeated 2½ cents per 100 pounds, both reductions being from the rates published and legally applicable to the shipments actually made. Moreover, it appeared from the testimony that the completion of the substitution was made by sending forward the hard wheat from Kansas upon the railroad billing of the soft wheat arriving from Illinois, thus defeating the through rate from Chicago to the Atlantic coast on this wheat by one-half cent per 100 pounds. Here, therefore, is a reduction of 6½ cents per 100 pounds from the legal rates gained by device through the failure to show upon the railroad billing the fact that different kinds of wheat are really separate commodities, distinguished as markedly one from the other in the market as oats from corn or barley from wheat.

There is some uncertainty in the record as to the amount of the substitution practiced under the device last above described.

64 There is absolutely no uncertainty, however, as to the possibility of such substitution and as to the fact that it has been made. The commission has in its possession the billing and inspection records of no less than 30 carload shipments of wheat as to which this device was used, with the result of defeating published rates as above stated. It also conclusively appears from the record that precisely the same manipulation is possible at Chicago upon

shipments of corn as is above outlined for shipments of wheat. The market for yellow corn is largely in New England territory, while the market for white corn is largely in southeastern territory. Yellow corn is largely produced at points west of Chicago which enjoy joint rates to the Southeast, but which do not enjoy joint rates to New England territory. A large part of the white corn reaching Chicago market is produced at points south and southeast of the city enjoying joint rates to New England territory and not to southeastern territory, the rate situation being identical with that applying to wheat above described. By substituting yellow for white corn, therefore, at Chicago the Chicago dealer is enabled to defeat rates several cents per 100 pounds.

At Detroit it was shown that the failure to distinguish in railroad billing between oak lumber and maple lumber was the occasion for a departure from the rates by means of substitution of 3½ cents per 100 pounds. In this case oak lumber shipped from Cincinnati to Detroit, and there milled while in transit to New England territory, is by the milling reduced in weight not less than 50 per cent. Therefore shippers using the transit privilege at Detroit send forward from that city the product of two cars of oak upon the transit privilege of one car of oak inbound, thus securing a surplus transit bill which is used by forwarding an equal weight of maple lumber, brought to Detroit by rail or by boat from points northwest of that city. This maple lumber, according to the published tariffs, is due to pay a rate of not less than 15 cents per 100 pounds from Detroit to Boston. By sending it forward as the continuation of transit of oak lumber from Cincinnati this rate, however, is reduced to 11½ cents per 100 pounds. This last-described case, besides helping to show that railroad billing should be more precise in its description of the commodity carried than at present, also shows that the problem of loss in weight at transit points must be met by the tariffs. The latter point will be more fully considered below. Similarly, it was found that at Burlington, Vt., lumber was sent forward as the transit of shingles, with the full knowledge and consent of the railroad company concerned.

The commission also found that railroad billing for salt at Milwaukee, where transit is enjoyed upon this commodity, frequently covers fine salt into Milwaukee and rock salt out, thus showing that rock salt is sent forward as a continuation of the transit of fine salt, to the defeat of the published rates, and to the injury of competing shippers not practicing this device.

Enough has been said to show that transit rules and regulations and railroad billings which do not distinguish between such different commodities as hard wheat and soft wheat or as yellow corn and white corn or as oak lumber and maple lumber or as rock salt and fine salt leave wide open the opportunity for practices which defeat rates, violate the act, and injure honest shippers.

Although it is beyond the record, the commission has reason to believe that at transit points on the Mississippi River substitution

of timothy hay for prairie hay has taken place with the result of defeating published rates; also that substitution of white oats for red oats has taken place with a like result.

Invisible loss at transit points: Many transits tariffs recognize the obvious fact that loss of weight at the milling point must be allowed for in the rules governing the privilege, or that local commodities will be substituted and sent forward without paying the correct local rate. For instance, transit tariffs governing the shelling of corn in transit at various western points provide that for each 100 pounds of ear corn inbound there may be sent forward as the continuation of the transportation 70 pounds of shelled corn and 30 pounds of cobs and husks. Also at the various points where milling in transit is given upon logs, it is provided that the weight inbound must be three or three and one-half times the weight outbound. Any excess of shipments outbound above this proportion must pay the local rate from the transit point. When properly adjusted to the actual conditions, such tariffs represent the obviously correct principle that transit can cover only the identical commodity or its product. In the case of the lumber shipments to and from Detroit above described it is evident that the transit of the oak lumber from Cincinnati should not cover more than the product of the oak actually received from Cincinnati. The failure of the tariffs in that case to so provide opens wide the door for the substitution of local tonnage to replace the loss of weight resulting from the milling process.

The commission has before it tariffs governing the shelling of corn in transit at some western points, which provide that a tonnage of shelled corn equal to the weight of the ear corn received inbound may be forwarded at the balance of the through rate from the transit point. Such a tariff is a direct invitation to the shipper at the transit point to evade the rate by buying corn locally or from nontransit points and putting in the product of its shelling to replace the weight of the cobs in the shipment actually entitled to the transit. The testimony showed that at various transit points in the west shippers are allowed to kill and dress poultry in transit, sending forward a weight of dressed poultry equal to the weight of the live poultry received. The opportunity for abuse of the rates by shipping local poultry in place of the weight lost in dressing is evident.

Tariffs providing milling-in-transit privileges for the various grains are generally defective in this respect: In addition to failing to take account of the invisible loss in weight caused by drying, cleaning, and milling, these tariffs allow outbound shipments of any one product to be forwarded at a weight equal to the entire weight of the grain received; that is to say, the shipment of a carload of flour may be based pound for pound upon the transit of a carload of wheat. It is evident that flour should not be forwarded as the transit of that portion of the grain which is made into bran,
66 shorts, or other product other than flour. So far as this is

allowed millers having a nontransit market for the shorts and bran produced from transit wheat, forward the flour product of nontransit wheat upon transit billing to the extent of the weight of the shorts and bran produced from transit wheat.

This necessity for making an allowance for the loss of weight of the commodity in transit during the process of milling or cleaning or drying or storage runs throughout the entire transit problem. The testimony shows, for instance, that barley will lose from 25 to 35 per cent of its weight in the process of malting, yet the malting-in-transit tariffs invariably provide that as many pounds of malt may be sent forward from the transit point at the balance of the through rate as there are pounds of barley received on the transit rate. The testimony from the flour millers shows that the invisible loss in milling is comparatively small, amounting to from 1 to 2 per cent. The loss of weight in corn in the process of drying runs as high as 10 or 15 per cent, but will average 5 per cent. The loss of weight for lumber in the process of dressing, as shown above, is as much as 50 per cent.

In this connection, and to meet arguments that have been made at the hearings, the commission desires to point out that some uncertainty exists as to whether the dealer at a transit point is to be placed upon an equality with his competitor at the point of origin of the raw material or with his competitor at the destination of the finished product. It is evident that the dealer at the intermediate point who has raw material drawn to him and sends the finished product through to destination secures from the carrier a different service from that which is given to the dealer who at the point of origin of the raw material manufactures the finished product and sends it through to destination. For example, dealers in lumber at Cincinnati may mill rough-oak lumber into flooring, reducing the weight by one-half in the process, and send the finished product from Cincinnati to New England territory at the lumber rate upon a single carload. The dealer at Detroit must have two cars of lumber drawn from Cincinnati to Detroit in order to get one car of the finished flooring to forward. The dealer at a New England point, the point of final consumption of this lumber, must have two cars of the rough lumber drawn the entire distance from the point of supply if he is to mill the same in competition with the dealers at Cincinnati or Detroit and must pay the lumber rate upon two cars to secure one carload of the finished product. The contention of the millers at transit points is that they should be placed upon an equality with the millers at the source of supply of the raw material rather than with the millers at the destination of the product. We do not here attempt to decide which result should be reached, but it is evident that this result should be possible of attainment by open and honest practices, and that substitutions of local or nontransit commodities should not be permitted as a part of the plan.

The reference to the lumber situation at Detroit above is simply by way of illustration. The problem presented occurs with practically every commodity at practically every transit point.

67 Local supply and local consumption: The testimony is general that shippers at transit points use when forwarding commodities the billing in hand which will give the best results; that is to say, they substitute in the way that will most reduce the published rates. One result of this practice is shown in the case of practically every flour miller appearing at the hearings. It was testified by these millers that the blending of wheat to secure a uniform grade of flour is an absolute necessity. At any typical milling point wheat is received from different territories under different rates. At most mills also a considerable quantity is received from nontransit sources, some from farmers' wagons, and some from nearby railroad points. All the wheat from the various sources must be blended to produce a single barrel of flour. No single carload of wheat is available for use until it has been tempered by wheat of a different quality from some other territory. The result is that the identity of the inbound shipment is absolutely lost in the process of milling. Any given lot of flour represents the average of all the wheat received rather than any single lot. Millers, however, without exception, use for outbound shipments the billing in hand which will give them the best results; that is to say, although the identity of the commodities is absolutely lost in the mill, the identity of the billing is absolutely preserved, and shipments of flour which are an average of all the shipments of wheat received go forward as coming entirely from that point which offers the lowest balance of a through rate to final destination. It also results from this practice that flour compounded of all the shipments received at the mill and delivered locally or to nontransit points is entirely charged against the local or nontransit supply, although it could not possibly be made from such supply. It is evident that if shipments out are average shipments corresponding billing should be canceled for the same. It is also evident that in so far as consignments of flour are delivered to the local market made from grain received from transit points, billing from such transit points should be canceled.

If, however, local supply and local disposition are kept separate from transit supply and product, or if billing is properly canceled for all local disposition, and if proper and frequent check is made of grain and product and billing on hand, and billing in excess of grain and product on hand is canceled, the oldest billing being selected for that purpose, it does not necessarily follow that unlawful substitution is accomplished by the blending of the grain for milling.

This branch of the problem is by no means confined to the millers. In the South it was found that cotton mills frequently use each year a supply of cotton equal to or greater than the entire nontransit supply coming to the markets at which they are located. These mills must have cotton of a uniform grade, and their supply is obtained only by selection or "classing" from the entire supply of

cotton reaching the local market; that is to say, the mill uses a few bales out of every shipment coming to the market, whether from a nontransit or from a transit point. The local supply of cotton is merged in the transit supply in making shipments to transit points beyond the market, the dealer invariably using the billing which will give him the best results. Thus it occurs that the supply going to the mill is charged as entirely resulting from the nontransit
68 supply of cotton reaching the market, although as a matter of fact it is well known to be an average of all the cotton reaching the market. It is obviously not proper to take out for nontransit disposition portions of transit shipments reaching a market unless at the same time corresponding transit billing is canceled.

Mixed carloads: The practice of sending forward from transit points mixed carloads of various commodities as transit of solid carloads of such commodities is closely allied in nature with the above-described practice of flour millers. The mixed-carload practice finds its most important use with grain shippers of the New England territory. These shippers receive at their warehouses solid cars of the various grains for distribution to retail dealers in the smaller New England communities. It is obvious that such retail dealers can not carry in stock a full carload of each sort of grain or feed. The jobbers therefore make up carloads containing a representative assortment of various grains and grain products to go forward upon the transit rate. These mixed cars may contain half a dozen sorts of grain and a dozen sorts of flour and feed. The practice is to base the transit upon a solid car of one kind of grain. There is no indication in the record that through rates are defeated by this practice in New England, for the reason that there appears to be no nontransit supply of any one of the sorts of grain or feed handled in the above manner. All the commodities which are sent forward must, owing to the necessities of the case, have been received upon transit billing having precisely the same value for shipment beyond. In so far as there may be local supply of any of the commodities sent forward on this transit arrangement, it is evident that substitution of such local supply is certain to take place in order to complete the deficiency in weight caused by local consumption.

If, therefore, there is no local supply at the transit point and billing is canceled for all tonnage disposed of locally, and the tonnage and the billing on hand are checked at reasonably frequent intervals and billing in excess of tonnage on hand is canceled, selecting for such cancellation the oldest billing, it would not seem that any unlawful feature is necessarily involved in this situation.

In other sections of the country than New England, however, and as applied to other commodities than grain and grain products, both in New England and elsewhere, it is certain that abuses of published rates occur in this mixed-car practice. As in the case of the millers blending wheat from different territory, some received on transit rates and some received on nontransit rates, it is evident that the shipments, either to transit or to nontransit points, represent an

average of the various shipments received, and that corresponding billing should be canceled rather than that the entire mixed carload be charged against a solid carload from which it could not possibly have been produced.

Mixed feed: The mixed-feed industry appears to be a growing one, especially at transit points. The maker of mixed feed mills together a number of grains and sometimes cottonseed meal and molasses, producing what is practically a new commodity from various substances, some received upon transit rates and others secured either locally or upon nontransit rates. The present practice at
69 many points is to forward cars of the mixture thus produced upon the transit of solid cars of grain. What has been said above regarding the blending of wheat by millers, and regarding the forwarding of mixed cars, and also regarding the substitution of the local supply for transit tonnage consumed locally, fully indicates the position of the commission regarding this question of mixed feed. We are convinced that great abuses exist in shipments of this character, but they do not seem to be other than a combination of the abuses separately discussed above. Regarding this matter of the forwarding of mixed feed, it is proper to suggest that there must be a limit to the application of the transit practice, and this limit must be reached when there is such a process of manufacture and such a loss of identity of the inbound commodity that the shipment forwarded may be said to be a new creation. Some of the mixed feeds brought to our attention appear to be beyond the fair limits of a transit practice.

Nontransit commodities added at transit points: Some tariffs provide that nontransit commodities (such as stone, grit, or molasses) may be added to transit commodities (such as grain or seeds), and a weight of the mixture equal to the weight of the inbound transit commodities forwarded as their product. This presents the difficulty of a less-than-carload lot of the nontransit commodity going forward at a rate lower than the less-than-carload rate properly applicable, and even lower than the carload rate from the transit point proper. It is obvious that such a practice can not be allowed, and that such mixed feeds and like products must go forward from the transit points in amounts containing at least the carload minimum weights of transit commodities taking the transit rates, and with the proper local rate (either carload or less-than-carload as the weight may be) imposed upon the nontransit commodities in the mixture. This rule must be followed wherever the nontransit property added is sufficient in amount to form a really calculable portion of the mixture. A like rule must be applied to the still more obvious case presented by the dealer who desires to include a lot of nontransit grain or other commodity in a carload of transit property. If the transit portion of the shipment is to move upon the balance of a carload rate it must be of itself not less than the carload minimum in weight, and the nontransit tonnage in the car must be charged with the proper local rate.

Concentration and classing of cotton: The concentration and classing of cotton at various points in the South does not present any problem different in principle from those presented by other commodities in other sections. Wherever there is a local supply and a nontransit disposition abuses are found, such abuses being greatest at seaports and at the points where mills have been established. It is believed that the general discussion of the practices relating to other commodities fully covers the abuses which are undoubtedly present at the cotton reshipping points in the South.

Trading in expense bills: It is obvious that at the transit points where substitution is allowed expense bills will come to have an independent value separate from the commodities to which they refer.

No effort was made to develop particular instances of purchase and sale of expense bills, but the record shows that such transactions take place at various points from time to time. The record also shows clearly that the price of commodities at transit points is frequently dependent upon the expense bill furnished by the seller, a somewhat higher price being paid if the expense bill is peculiarly valuable for outbound shipment. The additional price paid in consideration of expense bills of a certain character amounts obviously to a purchase of the bills.

At the Montgomery hearing, while it was not developed that expense bills for cotton are being sold at cotton-classing points, it was fully developed that such expense bills are frequently loaned by one shipper to another without the transfer of the commodity to which the bills relate. Thus a shipper having a carload of cotton to forward is able to get upon such cotton a lower rate by reason of the favor of one of his neighbors than could be secured by reference simply to the tariff of the carrier. Such transactions are complete proof of unlawful substitutions.

At Memphis a peculiar situation exists. The rates for the transportation of cotton to that city are higher than net rates, a refund being given upon proof of shipment of a like weight of cotton via the line of the same carrier. Expense bills for inbound shipments are held by the cotton factors or commission merchants representing the growers. Expense bills for outbound shipments are held by the buyers representing the consumers. No refund can be secured without the presentation of expense bill for each movement. The result is that many expense bills are sold by the buyers to the factors for an amount equal to one-half of the refund to be gained. Some factors remit the refund to their principals in this country; some are able to remit only a portion through having to buy outbound expense bills. Other factors retain the refunds, leaving their principles to pay the gross rates to Memphis. The entire situation is unsatisfactory and should be cured by the installation of a system of flat rates.

Surplus billing: It was shown by the hearing that dealers at transit points frequently have billing in hand without having an equivalent amount of the commodity represented by the billing. The practice in such cases is to retain the billing until a nontransit

supply of the commodity can be secured, then to send such nontransit supply of the commodity forward upon the transit billing. That this is an abuse is generally recognized. The new rules for the government of grain transit on the Ohio River expressly provide that surplus billing shall be destroyed and that at no time shall any shipper have in hand transit billing which is not represented by transit commodity awaiting shipment. Obvious as this principle is, it is not generally recognized. No tariffs discovered by us recognize the obvious fact that unpaid expense bills covering grain in stock must be considered when the cancellation of surplus billing is undertaken. Certain milling-in-transit tariffs provide for the cancellation of surplus billing only once per year, and others make no provision for any cancellation at any time. This leaves wide open another opportunity for such substitution as has been above described. To be absolutely lawful the cancellation of the billing should be automatic; that is to say, when the commodity represented by the
71 billing is disposed of, either locally or to a nontransit point or to a transit point, the inbound billing covering it should be canceled. Any other practice means that local commodities will be substituted and sent forward on the transit billing.

Overdrafts upon transit accounts: The anomaly is presented of outbound shipments from transit points at balances of through rates before the receipt of the inbound shipments depended upon for the transit privilege. At Milwaukee it developed that a number of grain shippers had enjoyed transit to the extent of some millions of pounds each beyond the amounts to which they would be entitled on the basis of shipments from transit points. The same feature has arisen with regard to shipments of dairy products at various points. Such situations show the recklessness with which both carriers and shippers have misused the transit arrangement and the urgent necessity for radical reforms.

Collection of less-than-transit rates to transit points: In the northwestern transit tariffs generally it is provided that upon receipt of grain at the transit point the through rate to the final destination shall be paid and that such destination shall be indicated. This at first glance seems not to afford opportunity for abuse. When it is remembered, however, that the rates from Minneapolis to various milling points intermediate between Minneapolis and Chicago are higher than the rates from Minneapolis to Chicago, it will be seen that the miller at the intermediate point, by paying the rate to Chicago and having the grain delivered to him locally, actually gets shipments to the transit point at less than the rate to such point. In one case where a large milling industry is concerned, the rate on oats from Minneapolis to the milling point is 15 cents per 100 pounds. The rate on oats from Minneapolis to Chicago via such milling point is 7½ cents per 100 pounds. This mill, under these tariffs, pays the rate to Chicago, 7½ cents per 100 pounds, and receives delivery of the oats at the milling point. It has a moral duty, of course, to send these oats forward and thus complete the transit. We can not find,

however, that there is any enforcement of this duty. It mills the oats and has the right to send forward an equal tonnage. It may secure oats from a transit point enjoying a different rate and forward them, or forward oats from a nontransit point, or it may refrain altogether from completing the transit transaction. It is evident that such an adjustment is absurd. Upon delivery of the commodity at any point, no less than the rate to that point should be collected; otherwise the local rates to the point cease to have any practical significance.

Transit as a railroad policy. One striking fact developed by this inquiry is that the transit privileges have been needlessly multiplied by the carriers. The interest which prompts this needless extension of the privilege is apparent. A carrier bringing raw material to a competitive transit point desires always to make certain that the product of such raw material shall go forward by its line. The most evident method of securing this result is to collect something more than the net rate for the transportation of the raw material to the transit point upon delivering such raw material to the industry, the express collection to be credited upon the rate for the forwarding of the finished product from such point. In such
72 cases it is evident that the industry must pay a penalty if it uses any other means of transporting the finished product than the one provided by the carrier which transported the raw material. An analysis of the transit tariffs filed with us shows that the arrangement is in many cases not a privilege at all, but a burden upon the industries to which it applies. Such an arrangement frequently amounts to a requirement by the carrier that the industry shall in advance put up a bond that the finished product shall be forwarded by such carrier's line.

This competitive policy of the carriers, which results in many unnecessary transit arrangements, has also resulted in many pretended transit arrangements which can not be justified as such. We have before us, for instance, tariffs which provide for the forwarding of agricultural implements, vehicles, etc., as the transit of inbound shipments of logs. Unless all tariffs are to become "transit tariffs," such arrangements as those last mentioned must be condemned as unlawful. An agricultural implement is bound to be largely composed of other materials than wood, and may be entirely composed of such other materials. It is a manufactured product, having its first being at the factory where it is made. Its shipment from the factory is not in any proper sense a continuation of the shipment of the log from the forest to the mill.

In conclusion: The hearing has failed to demonstrate that the commission's ruling was too strict. It has demonstrated that various practices, as above outlined, have resulted in the violation of published rates, to the injury of shippers not taking advantage of such practices. Fraud can not be defined in this matter of abuse of transit any more than in any other line of activity. The commission will not undertake to frame a code of transit rules. The traffic officials of the carriers have the duty and the responsibility under

the law of initiating rates. They all agree in the statement that the system of rates devised by them is practicable, and will result in great injury to carriers and business interests unless exceptions and privileges in the nature of transit are introduced. The commission does not condemn the transit privileges as such, but it does hold that the responsibility for safeguarding and policing them, to the end that the lawfully published rates shall be collected, rests entirely upon the carriers. This is not saying that shippers will be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of the carriers to collect such rates. Except in very rare instances, carriers give rebates or concessions only upon solicitation by shippers. In such case the liability of the carrier yielding to the solicitation is no greater or different than that of the shipper making it. The language of the law is:

"It shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advan-
73 tage is given or discrimination is practiced. Every person or corporation whether carrier or shipper who shall knowingly offer, grant, or give, or solicit, accept, or receive any such rebates, concessions, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand nor more than twenty thousand dollars."

It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges. They may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates. Such certifications, however, do not excuse carriers from determining for themselves and at their peril that shipments carried at other than the regular local rates from the point of shipment are entitled to the exceptional or transit rates. Carriers will not be allowed to put in transit privileges either through competition with each other, or through the desire to hold local rates up to the highest possible point, without taking entire responsibility for the results of such privileges and the uses made of the same.

The commission is convinced that if the carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now, while the elimination of these arrangements will decrease their expense of bookkeeping and supervision and will be for the benefit of all the industries affected. The

commission is also convinced that if carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers and to their final profit. In every case where it is possible to replace transit privileges with flat rates it should be done.

At none of the large warehousing markets are the difficulties in the way of the adoption of a flat-rate system any greater than were those presented at Missouri River points some years ago when the commission condemned the unlawful arrangement of rates on grain. As a result of the commission's action the full local rates upon grain to these points are now paid regardless of the final disposition of such grain. Outbound shipments of grain from these points are carried at a flat rate regardless of the point of origin, providing the grain be "from beyond." While still open to some legal objection, the system is far in advance of the system which it succeeded, and is so much in advance of the transit privileges generally throughout the country that it may well be accepted as a model by traffic managers desirous of remedying chaotic and unlawful practices upon their lines. The commission is convinced that in no other way can transit rates to and from the large storage markets be arranged unless carriers are to take an impossible burden of policing and supervision and shippers be subjected to extremely annoying rules.

The commission has been asked by numerous shippers, including the grain dealers along the Ohio River, the grain dealers in intermountain territory, and the lumber and shingle manufacturers of the Pacific coast, to condemn the transit privilege entirely as illegal. This the commission is not prepared to do, the present order of the investigation affording no warrant for such action.

74 It is the law which has binding force upon both shippers and carriers in this matter, rather than rulings of the commission, which simply represents the commission's view of the law. The commission's duty is to enforce the law, and this duty it is determined to perform. Ruling 76-A of the commission, supra, may be taken, together with this opinion, as indicating the commission's knowledge of the abuses shown by this investigation, and its demand upon both carriers and shippers that these and all similar abuses be prevented. If the abuses are prevented the law will be satisfied. If the abuses are not prevented the law will not be satisfied, no matter how ingeniously the machinery provided obscures the fact that the law is evaded.

We are convinced that shippers and carriers fully understand the commission's position and their own practices. It is needless to say that the continuance of such abuses as are above outlined will compel the commission to resort to criminal prosecution, to include both shippers and carriers, to secure obedience to the law rather than to any further or other form of moral suasion.

75 "EXHIBIT H" TO PETITION.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of June, A. D. 1910.

Present:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
} Commissioners.

W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. } No. 1698.

Upon consideration of the record in the above-entitled cause, the commission upon its own motion, for the purpose of correcting a clerical error, amends the order of the commission entered herein on the 3rd day of June, 1910, by striking out the last paragraph but one and substituting in lieu thereof the following:

It is ordered, That the defendant carriers in this case are hereby notified and required to show cause before the commission at Washington, D. C., at 10 o'clock a. m., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. v. Nashville, Chattanooga & St. Louis Railway et al., heretofore referred to, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating, in any respect whatever, between Nashville and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located within the State of Georgia, and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products, and hay, upon the ground that such discrimination is undue, unreasonable, and unlawful.

It is ordered, That a copy of this order be forthwith served upon each of the parties to this case.

A true copy.

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY, *Secretary.*

76 "EXHIBIT K" TO PETITION.

Opinion No. 1593.

Before the Interstate Commerce Commission.

W. S. DUNCAN & COMPANY ET AL.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. } No. 1698.

Decided June 9, 1911.

Supplemental report and order of the commission.

77 W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. } No. 1698.

Submitted January 10, 1911. Decided June 9, 1911.

1. In the original report and order in this case, 16 I. C. C. Rep., 590, it was found, among other things, that the reshipping or rebilling privilege permitted in the tariffs of defendants on grain, grain products, and hay at Nashville, Tenn., was unlawful, and accorded to that city undue and unreasonable preference and advantage and subjected complainant cities to undue and unreasonable prejudice and disadvantage, and the carriers were ordered to cease and desist from further permitting such transit or reshipping privilege. The order was suspended pending an investigation by the commission, upon its own initiative, of the evils attendant upon transit privileges generally. When the report in that case was made in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, and the privilege as it had obtained theretofore at Nashville was modified in accordance with the report, a further hearing was granted in this case to ascertain whether or not the existence of the privilege at Nashville, while denied at all other points south of the Ohio River and east of the Mississippi, constituted an unreasonable preference or advantage and undue and unreasonable prejudice and disadvantage in violation of section 3 of the act to regulate commerce.
2. After further hearing and oral argument on this particular issue: Held, That the matters and things complained of herein constitute a violation of section 3 of the act to regulate commerce.

William A. Wimbish for complainants.

Perkins Baxter for Louisville & Nashville Railroad Company.

R. Walton Moore and S. F. Andrews for Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railroad Company; Seaboard Air Line Railway (S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof); Atlanta & West Point Railroad Company; Western Railway of Alabama; and Southern Railway Company.

Luke Lea and Pitts & McConnico for Nashville Grain Exchange and Nashville Board of Trade, interveners.

Supplemental Report of the Commission.

Clements, *Chairman:*

The complaint, filed in this case by the commercial interests of Atlanta and other Georgia cities, hereinafter referred to as complainant cities, is that defendants, through the adjustment of rates of transportation, rules, and practices, grant to dealers at
78 Nashville, Tenn., undue preference and advantage in the handling of grain, grain products, and hay moving from the Ohio and Mississippi River crossings and from points north and west thereof, through Nashville to southeastern destinations. It is alleged that the result of these practices is that Nashville is able to deliver grain and grain products and hay in southeastern territory under such unduly preferential rates and privileges that dealers in complainant cities cannot profitably participate in the business in competition with dealers located at Nashville.

One of the alleged discriminatory privileges complained of is the allowance at Nashville by the defendants reaching that city of three-quarters of a cent per 100 pounds in payment of so-called elevation. In its original report in this case, 16 I. C. C. Rep., 590, the commission, following its action with regard to elevation allowances at other places, condemned the practice. The commission has, however, in order to prevent discrimination between dealers at different places, held its order in abeyance awaiting the decision of the courts with respect to a similar allowance condemned in another case.

The petitioners further sought to have the commission order in a lower basis of rates for this traffic in carload than in less-than-carload shipments. It was found that the carriers had for many years maintained rates on grain and grain products and hay in this territory applicable uniformly upon an any-quantity basis, and in its report, supra, the commission refrained from interfering therewith, as it appeared to operate uniformly for all shippers, large or small, and for the traffic here involved was not unjustly discriminatory or unlawful.

The final prayer of the petition related to the practice of rebilling or reshipping, which is permitted on grain, grain products, and hay at Nashville, but which is not accorded at any other point in southeastern territory. Under this privilege grain moving through Nashville may be unloaded and held not longer than six months and then reshipped on at the through rate from origin to destination instead of at the sum of the rates into and out of Nashville. This practice was described at length in the commission's report, wherein it was condemned and an order entered requiring defendants to cease and desist from granting this privilege to dealers at Nashville. The order, however, was suspended pending an investigation by the commission on its own motion, as to the extent and nature of transit and reshipping practices and the methods followed therein, as well as the results thereof. The general matter was therefore set down for hearing in various parts of the country, and an inquiry was made by the commission into the practices obtaining in various localities and upon many different commodities.

The purpose of the investigation was to ascertain whether these privileges and practices were attended with inherent and unavoidable opportunities for defeating the lawfully established rates, or whether they could be permitted to exist under such administrative regulation as would wholly or approximately obviate the evils attendant thereon. In its report in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, the commission prescribed the establishment and observance of certain rules policing the privileges and practices in such manner as to prevent the defeat of
79 published rates at transit points established by the carriers where they were to be continued, in order that the practices and privileges might be permitted to continue if possible without the abuses incident thereto. The commission did not upon this general inquiry condemn rebilling or reshipping as such, but held that the responsibility for safeguarding and policing them, to the end that the lawfully published rate should be collected, rested upon the carriers. Carriers generally, guided by the commission's conclusions in this matter, have filed new rules and regulations in conformity therewith. It appears that the practices at Nashville have been thus corrected, and cut off altogether on movements through the Memphis crossing to Nashville as the possibilities of defeating the published rates in connection with that movement, to which attention was called in our former report in this case, could be obviated in no other way.

The results of the commission's inquiry and the action following on the part of the carriers made it advisable to vacate the order originally entered in this case in so far as it required defendants to absolutely cease and desist from granting the privilege of rebilling and reshipping to dealers at Nashville, as set out in our former report in this case, and the commission therefore proposed to consider a modification of its order in such manner as to merely prevent the discrimination between Nashville and other places, leaving it to the carriers to accomplish this by either granting the privilege at complainant cities or by denying it to all. A citation was issued and served requiring defendants to show cause why the order theretofore entered should not be changed and modified so as to require the defendants to cease and desist from any undue or unreasonable preference or advantage in any respect whatever in favor of Nashville, or subject Atlanta and other complaining cities, with respect to transit or reshipping privileges upon grain, grain products, and hay, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

A hearing was had upon this citation or rule, additional briefs have been filed in the case, and it has been further orally argued. The defendants have amplified the evidence upon certain points with regard to the dissimilarity of circumstances and conditions affecting the transportation of the traffic involved to and from Nashville, destined to points farther to the southeast, as compared with those affecting the transportation of like traffic into and out of Atlanta

and the other complaining cities. It is argued that the disadvantages complained of, if any, are not undue or unreasonable or in violation of the act to regulate commerce. This matter was quite thoroughly treated in the original record of the case, and it was at that time carefully weighed and considered by the commission in reaching the conclusion announced in its opinion, supra. It seems advisable, however, under the circumstances, to briefly reconsider this phase of the question in view of the importance which now attaches particularly thereto.

It is claimed on behalf of the city of Nashville that it is a "primary grain market," and it is averred that this entitles that city to the privilege of reshipping grain in manner and effect, as stated in our previous report herein, and that complainant cities are not
80 markets of this character and hence are not entitled to such privilege. While the record is not clear as to what is meant by the use of the expression referred to, it is said that a primary grain market is one where surplus grain is gathered from adjacent producing points and held for the demands of commerce, and that this is true of Nashville. No statistics have been offered showing the relative amount of grain coming from the Ohio River and beyond into Nashville, or the amount of local grain brought to Nashville; but it is certain that the evidence does not show a surplus of local production. It does not appear that reshipping was accorded to Nashville on the hypothesis that it was a concentration point for local grain. The privilege was particularly intended to take care of the through movement from the Northwest. Grain from the region south and east of the Ohio and Mississippi Rivers and not moving from the crossings by rail is not entitled to reshipping privileges at Nashville whether brought in by river or by rail. The record throws little light upon the relation of Nashville to the local production of grain in years gone by, and whether or not it was at one period of its history a concentration point for the grain produced in that section, and therefore a primary grain market in that respect must necessarily have very little to do with the issues here involved, because the privileges complained of do not apply on anything but grain from the crossings by rail, and because if Nashville was ever a primary grain market in the sense indicated it was at a time before these transit privileges had been established and when the movement of grain from the Northwest to the Southeast was quite limited.

Some of the characteristics given in the affidavits, filed on behalf of Nashville, of points at which the reshipping privilege is found are: Where there is a wholesale supply market from which distribution can be had in various directions to other markets in touch with it or in the same general territory; where the geographical position of the city is such that it has the facilities for water or railroad transportation and railroad competition among carriers with respect to where the commodity is produced and where it is consumed, and where there is proximity to the final market. It is said that the existence of an interior concentration point or milling point and

terminal markets enables the producer to have available competitive markets for his commodities and enables the consumer to have a steady, reliable market in competition with other markets from which to draw his supply. It is pointed out that the extension of these transit privileges, permitting a commodity to be stopped at an interior concentration or milling point where rates do not break and then permitting it to be reshipped from that point on the basis of a through rate from origin to destination, undoubtedly tends to equalize and distribute the industries of the country and prevents congestion by the location of all these industries at terminal or rate-breaking points. These affidavits aver that there are hundreds of points throughout the United States that possess the qualifications above described and which have been accorded these privileges.

It is further claimed for Nashville that she is advantageously situated for the distribution of grain, and is therefore also a distributing market. It is in effect urged by defendants and the
81 representatives of Nashville interveners, that it has all the attributes of a primary grain market and also a distributive market, and that in these particulars no other city south of the Ohio or east of the Mississippi is similarly situated.

It is also urged that Nashville is located at precisely the proper distance between points of origin and destination so that grain may be stopped off from its journey and elevated, and thus prevented from spoiling, and that cities located somewhat to the north of Nashville are reached too soon for this purpose, while any point south of Nashville could not be reached until the grain would be liable to damage. There is some conflict, however, as to this matter, and Atlanta's representatives have reminded us of the salubrity and wholesomeness of her atmosphere and her elevation above Nashville.

It is a recognized fact that the existence of the Cumberland River has produced conditions which have been reflected in freight rates and adjustments thereof to Nashville, but it is important to inquire just what effect the river has upon the traffic here involved. In meeting the river competition on this grain traffic from the Northwest, the carriers have not reduced the rates to Nashville in competition with the river, but they have left that city to the enjoyment of what traffic could be moved to that point at river rates of transportation for local consumption. At the same time, by the adoption of the reshipping privilege at Nashville, commercial preference and advantage have been accorded the interests there engaged in supplying the immense territory to the Southeast with its increasing consuming power. In other words, the present adjustment promotes both the local and the through grain business and adroitly keeps the line of cleavage between them clear and distinct. The grain moving into Nashville locally, via the river and otherwise, can hardly compete with the through business to the Southeast under the present tariffs, and grain moving into and out of Nashville under the transit privilege can not very well compete with the local industry. This twofold adjustment leaves little more that could be done to put Nashville on

an advantageous basis as compared with all rivals in that territory.

In respect to this river competition it is important to note that it has not in fact reduced the rate to Nashville, nor the rate from the crossings to the Southeast, nor the rate from Nashville to the Southeast. The reshipping plan seems to have pretty well destroyed this river competition without reducing materially these charges. The evidence is to the effect that reshipping was adopted to secure to the railroads a portion of the business. As to this immensely valuable through business from the Northwest to the Southeast, it has absorbed practically all. In fact, under present conditions, with the cost of transshipment from rail to river and from river to rail, this water competition is greatly nullified. Furthermore, there seems to be nothing connected with this privilege in its actual practice in this country which makes it dependent upon location upon navigable waters. In fact, but an insignificant portion of the total number of points where it is practiced are so located, and many cities north and west of the Ohio and Mississippi Rivers enjoy the privilege
82 either as a primary or distributive market irrespective of location upon navigable waters or of other competitive conditions.

Considering particularly the traffic involved in this case, namely, the transportation of grain, grain products, and hay from the grain-growing region lying to the north and west, to the consumers of the Atlantic States of the Southeast, there are many characteristics of similarity between Nashville and complainant cities which are obvious and predominating. They are all located in a section which consumes a portion of the excess production of grain and its products produced in a more or less distant part of the county. This condition of affairs naturally invites those with capital and business inclination to participate in the enterprise of supplying this demand. Both Nashville and the complainant cities are close to the consumers, and the testimony is that they are in strong competition for even the smallest trade of the retailers and consumers. Nashville is, of course, peculiarly benefited by the exclusive use in this territory of this reshipping privilege in connection with the further practice of the carriers of charging the same rate whether the shipment is a carload or a single barrel of flour or bale of hay. The testimony is that the distant markets at the river crossing confine themselves to the larger wholesale trade of the Southeast and, therefore, there is not the same character of competition between the crossing points and the southeastern cities as exists between the cities in the Southeast themselves.

In the rapid growth and development of the South in recent years the volume of consumption has increased proportionately and the competition for business is strong and persistent. It appears of record that complainant cities are laboring under great disadvantage in competition with Nashville, while the business thrives and prospers at Nashville, and whatever other causes may contribute toward producing this result, the fact remains that Nashville does have these

various privileges contained in the tariffs of defendants, and that she is the only city in the Southeast enjoying them.

At the hearing it was strongly urged that the commission should not disturb the existing arrangements, because grain dealers at Nashville have invested large sums in facilities for handling the business located upon the lines of defendants, and, therefore, discontinuance of transit privileges at Nashville would work an enormous destruction of values amounting to confiscation.

The carriers assert that they did not voluntarily establish the privilege of reshipping at Nashville, but that it was forced upon them by conditions over which they had no control. It is not infrequent in our investigations of matters dealing with discrimination to find the carriers whose tariffs have contained rates or practices in violation of the principles of relative justice defending their action as being a necessary result of the logic of a situation from which they would have been glad to escape had any means of escape been open to them.

The principle of milling-in-transit is quite similar to that of reshipping, namely, the application of the through rate to an intercepted movement. In fact, we are told in this record by interveners' affidavits that—

83 "transit privileges now generally accorded had its inception years ago in the milling-in-transit of grain, which had for its purpose the placing of mills on a direct line of haul, origin of the grain to destination of the product, on a parity, by protecting the through rate, point of origin to ultimate destination."

We observe from the record that the reason advanced for originally permitting milling in transit at Nashville was to keep Nashville mills running the year round. It is not claimed that milling in transit was forced upon the carriers in the same sense that reshipping was, yet the carriers have now extended milling in transit without preferring one point to another.

The commission recognizes its duty to carefully consider the results of its order upon established business conditions, and has not failed to carefully consider the effect of an order in this case. The carriers indicated at the hearing that the effect of an order declaring the privileges accorded to Nashville as amounting to unjust discrimination and undue preference and disadvantage against complainant cities would result in taking out the privileges at Nashville, rather than extending them to complainants. Under such an order, it would, of course, be within the election of the defendants to obviate the discrimination in either manner. We think, however, that the objections advanced by them for not extending the privilege are not as serious as they apprehend. The privilege, of course, could be surrounded by any lawful limitations and regulations prescribed by the carriers so long as their application was uniform to all parties in interest. For instance, it would not be necessary to permit the privilege at more than one point on the same grain, and then only in a forward direction. And as to defendants' objection to the

trouble and expense of policing the privilege elsewhere than at Nashville, manifestly it is a discrimination undue in nature to provide for these things at one place and refuse on the ground of trouble or expense to do likewise at a competing point.

Admitting, however, that the carriers should find it necessary for their purposes to take out the privilege at Nashville, we feel that the benefits to be derived by all parties and interests concerned by a due observance of the statute would in and of itself justify the action; and, further, that the results on the business at Nashville would not be as dire and chaotic as is represented by the defendants.

While admitting much that is said in favor of Nashville and appreciating the zeal and persistency with which her natural advantages of location have been presented for our attention, we find that in the light of comparison with the other cities in the Southeast Nashville is not so dissimilarly situated with respect to this particular traffic as to entitle it to be singled out and exclusively granted the important and extremely valuable privileges denied to its competitors. It seems to us remarkable and unusual that the carriers, in their tariffs, should have preferred one of these points to another in the handling of this profitable business. That their tariffs are contrary to the provisions of the statute we have no doubt, as we do not find anywhere in the record a substantiation of the existence of such conditions of dissimilarity at Nashville as would justify giving the sanction of the commission to an adjustment which accords these very valuable privileges to one city of the Southeast and denies
84 them to every other city south of the Ohio River and east of the Mississippi.

After a careful consideration of all the pertinent facts and circumstances, we are of the opinion and find that the matters and things complained of herein constitute the undue and unreasonable preference and advantage and the undue and unreasonable prejudice and disadvantage, as between the parties to this proceeding, prohibited by section 3 of the act to regulate commerce, and an order will be issued accordingly.

85 *Order.*

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of June, A. D. 1911.

Present:

Judson C. Clements,
Charles A. Prouty,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

W. S. Duncan & Company; A. P. Morgan Grain Company; J. D. Frazier & Company; Adams-Whitney Company; A. L. & M. W. Fain; J. J. & J. E. Maddox; Charles E. Caverly; R. W. Davis, of R. W. Davis & Company; A. C. Woolley & Company; McCord-Stewart Company; Rogers & Harwell; F. W. Keeley Company; Deaton Grocery Company; Dan Joseph Company; G. Y. Banks & Company; The Macon Grocery Company; A. B. Small & Company; Adams Brothers Company; Merritts & Company; F. W. Hazelhurst Company; Adams & Johnston; Soloman & McRae; R. T. Birdsey & Company; George A. McArthur; Parker-Willis Company; Cordele Grocery Company; Albany Grocery Company; Tift & Peed Grocery Company; A. S. Pendleton Company; Dalton Grocery Company; Marion Curry; Orr-Smith Grocery Company; Brandon & Dyer; Gallaher Grocery Company; Simpson Grocery Company; J. R. Ragan; J. M. Bradshaw & Company; George F. Chidsey and Carey T. King; Talmadge Brothers; Webb & Crawford; G. H. Hulme; and Epps-Wilkins Company. } No. 1698.

v.

The Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Louisville & Nashville Railroad Company; Atlanta, Birmingham & Atlantic Railroad; Southern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway; Alabama Great Southern Railroad; Georgia Southern & Florida Railway; Illinois Central Railroad Company; Central of Georgia Railroad Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway; and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; and The Western Railway of Alabama, defendants. The Nashville Grain Exchange and Nashville Board of Trade, interveners.

86

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the commission having found in said report that the granting to dealers at Nashville, in the State of Tennessee, the privilege of rebilling or reshipping grain, grain products, and hay from Nashville, whereby grain moving through Nashville may be unloaded and held not longer than six months and then shipped on at the through rate from origin to final destination

instead of at the sum of the rates into and out of Nashville, which rebilling or reshipping privilege has been more particularly described in the report made and filed in this case, while denying said privilege to dealers in Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, is unlawful and gives undue and unreasonable preference and advantage to Nashville and to the dealers in grain, grain products, and hay located at Nashville, and subjects Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, and the dealers in grain, grain products, and hay located at said cities, to undue and unreasonable prejudice and disadvantage:

It is ordered, That the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911, and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities.

87 "EXHIBIT L" TO PETITION.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 18th day of July, A. D. 1911.

Present:

Judson C. Clements,
Charles A. Prouty,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY ET AL.
} No. 1698.

Upon further consideration of the record in the above-entitled case,

It is ordered, That the order heretofore entered in this proceeding and by its terms made effective August 1, 1911, be, and it is hereby, so modified as to become effective on September 1, 1911, instead of August 1, 1911.

It is further ordered, That a copy of this order be served upon each of the parties to said case.

A true copy.

[Seal Interstate Commerce Commission, 1887.] JUDSON C. CLEMENTS, *Chairman.*

88 *Petition of Louisville & Nashville Railroad Company et al.*

Filed August 24, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, and Nashville, Chattanooga & St. Louis Railway, petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT.	No. 47. In equity.

To the honorable judges of the Commerce Court:

The Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway exhibit this, their original petition, against the United States of America, and thereupon say as follows:

1. Petitioner, the Louisville & Nashville Railroad Company, is a corporation organized and existing under the laws of the State of Kentucky, and is now, and, continuously for a long period of years heretofore, has been, engaged as a common carrier in the transportation of interstate commerce.

Among the lines which it operates is one extending from St. Louis, in the State of Missouri, through Evansville, in the State of
89 Indiana, to Nashville, in the State of Tennessee, and another extending from Cincinnati, in the State of Ohio, through Louisville, in the State of Kentucky, to Nashville. It operates lines in connection with the aforesaid lines from Nashville to Birmingham, Montgomery, and other points in the Southeast, and also a line from Louisville and from Cincinnati to Atlanta.

Its rails do not reach Columbus, Cordele, Albany, Valdosta, Montezuma, Dublin, Rome, or Athens, in the State of Georgia.

A very large and important part of the traffic which it transports from and via the Mississippi River and Ohio River points, which it serves to Nashville and thence to destinations in the Southeast located on its own lines, and on the lines of its connections consists of grain, grain products, and hay, rebilled or reshipped from Nashville in the manner hereinafter stated.

Should it be required to withdraw or cancel the tariff under which such rebilling or reshipping at Nashville is permitted, in accordance with the order of the Interstate Commerce Commission, hereinafter set forth, said petitioner will be subjected to a very serious and heavy loss, amounting to many thousands of dollars per annum, and

therefore said petitioner avers that the matter and amount in dispute in this proceeding between it and the defendant far exceeds the sum of two thousand dollars ($2,000.00), exclusive of interest and costs.

2. Petitioner, the Nashville, Chattanooga & St. Louis Railway, is a corporation organized and existing under the laws of the State of Tennessee and other States, and is now, and continuously for
90 a long period of years heretofore, has been engaged as a common carrier in the transportation of interstate commerce.

Among the lines which it operates are those extending from Paducah, in the State of Kentucky, to Hollow Rock, in the State of Tennessee; from Hickman, in the State of Kentucky, to Hollow Rock, and from Memphis, in the State of Tennessee, to Hollow Rock, from which last named point is a line to Nashville. As owner and lessee it operates, in connection with the line to Nashville, lines from Nashville to Chattanooga and Atlanta and many other important points in the southeast. Its rails reach Rome, but they do not reach Columbus, Macon, Cordele, Albany, Valdosta, Montezuma, Dublin, or Athens, in the State of Georgia.

A very large and important part of the traffic which it transports from and via Mississippi River and Ohio River points to Nashville and thence to destinations in the Southeast located on its own lines, and on the lines of its connections, consists of grain, grain products, and hay, rebilled or reshipped from Nashville in the manner hereinafter stated.

Should it be required to withdraw or cancel the tariff under which such rebilling or reshipping at Nashville is permitted, in accordance with the order of the Interstate Commerce Commission, hereinafter set forth, said petitioner will be subjected to a very serious and heavy loss, amounting to many thousands of dollars per annum, and therefore said petitioner avers that the matter and amount in dis-
91 pute in this proceeding between it and the defendant far exceeds the sum of two thousand dollars ($2,000.00), exclusive of interest and costs.

3. In the year 1908, a petition was filed before the Interstate Commerce Commission in the style of W. S. Duncan & Company et al. vs. Nashville, Chattanooga & St. Louis Railway et al., the main purpose of which, as petitioners are advised and allege, was to compel them and other carriers, serving the Southeast Territory, to establish and maintain a difference between the rates on carload and less-than-carload shipments of grain, grain products, and hay.

In addition, however, the petition attacked the aforesaid rebilling or reshipping arrangement at Nashville, as essentially illegal, and further, as being unduly discriminatory in favor of Nashville, as against Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Montezuma, Dublin, Rome, and Athens.

By their answers, the petitioners herein, and the other carriers impleaded in the said proceeding, denied the charge of undue discrimination, and averred the said arrangement to be lawful.

Before the introduction of any evidence, the Nashville Grain Exchange and the Nashville Board of Trade, representing Nashville business interests of great extent and magnitude, were allowed to intervene and become parties to the proceeding, the intervenors contending that the attack upon the said arrangement was unwarranted, and should not receive the approval of the commission.

92 The proceeding was assigned for hearing, and evidence introduced touching the various issues, and being submitted for decision, the commission, on June 24, 1909, made a report, which appears in full in 16 I. C. C. Reports, 590, et seq., and an order in accordance with the views stated in the report. The report condemned the said arrangement in the following language:

"We are of the opinion that the reshipping or rebilling privilege and the application of rates thereunder obtaining at Nashville is an illegal device by means of which grain, grain products, and hay may be transported at less than the tariff rate applicable thereto; and, further, that it gives to Nashville undue and illegal preference and advantage and subjects other points in the Southeast to unjust and unreasonable prejudice and disadvantage. An order will be entered in accordance with the views herein expressed."

The effective date of the order was postponed from time to time, and at length the commission directed the carriers to appear and show cause why the order should not be modified so as to declare the said arrangement unlawful, as subjecting Atlanta and the other Georgia towns herein mentioned to undue discrimination.

Meanwhile the commission had conducted a general investigation of transit privileges, reaching the conclusion that said privileges as such were not illegal.

In the order or rule to show cause but one issue was considered, namely, whether the Nashville arrangement amounts to undue discrimination.

There was further evidence introduced, and on the ninth day of June, 1911, the commission made a supplemental report and 93 order, the former being set forth in full in 21 I. C. C. Report, 186, et seq., condemning the said arrangement and requiring the carriers, on or before the first day of August, 1911, either to cease from maintaining the same at Nashville, or to accord a similar arrangement to the Georgia towns hereinbefore enumerated.

The mandatory part of said order of June 9, 1911, is as follows, to wit:

"It is ordered, that the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911, and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville, the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin,

Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities."

Your petitioners are two of the defendants herein named. The effective date of the last-named order, by a postponement, has been made September 1, 1911, and the order will then become operative, to the great prejudice and irreparable injury of petitioners, unless its operation is suspended by the action of this court.

4. Petitioners aver that their tariffs, by which the said rebilling or reshipping arrangement at Nashville is maintained, provide,
94 in substance, that on shipments of grain, grain products, and hay transported to Nashville from Mississippi and Ohio River crossings, and beyond, the local rate to Nashville shall be paid; that the shipments may be stopped at Nashville for not exceeding a period of six months, at any time during which they may be rebilled from Nashville to final destination, and that any shipment so rebilled shall be assessed with the local rate from Nashville to destination, but that, in respect to any such reshipment there shall be a refund of a part of the local rate paid on the shipment to Nashville, so that as a result the total transportation charge thus accruing on any shipment from any given Ohio or Mississippi River crossing via Nashville to any given destination corresponds exactly with the transportation charge assessable on the shipment had it been billed and moved through from the crossing to destination without being stopped at Nashville, and whether or not it moved via Nashville. Copies of the said tariffs will be to the court shown and filed and made a part of the record.

5. Petitioners aver that the said arrangement, materially and substantially as it now is, has, as shown by the uncontradicted evidence in said proceeding, been maintained at Nashville for more than forty years, and that the business and operations of carriers, grain dailers, and consumers have become adjusted thereto. They further aver that to establish the arrangement at the large number of towns in Georgia hereinbefore mentioned would greatly reduce the revenues petitioners and their connections now receive for the transpor-
95 tation of these commodities to said towns. They further aver that it is not practicable to establish said arrangement at the large number of towns in Georgia hereinbefore mentioned, and that the enforcement of or compliance with the commission's order will mean the cancellation or destruction of said arrangement at Nashville, which, as shown by such uncontradicted evidence, can not be destroying without the gravest consequence in the way of disturbances of trade and impairment of industries and great injury to all interests without, as they aver, any benefit to complainants before the commission or those whom they represent.

During the long continuance of this transportation practice, and with the belief in its necessity and permanency, large investments have been made by petitioners in the construction of yards, main and side line, and other facilities, and by dealers in the construction of warehouses, elevators, etc., devoted exclusively to this business, and

available for nothing else, the value of which will be destroyed, unless the order heretofore made by the commission is suspended by the action of this court.

Your petitioners further aver that, while ostensibly given the option of either discontinuing the rebilling privileges at Nashville or establishing a like privilege at Atlanta, Columbus, Cordele, Albany, Valdosta, Montezuma, Dublin, Rome, and Athens, it is, as a matter of fact, not practicable or within their power to establish such an arrangement at the towns in Georgia hereinbefore mentioned,
96 for the reason that their rails do not reach said points with the exception that the rails of the Nashville, Chattanooga & St. Louis Railway do reach Atlanta and Rome. Nor can they control the action of the carriers operating beyond those points, whose cooperation and assistance would be indispensable should such extension be attempted. If grain, grain products, and hay are shipped originally from Ohio and Mississippi River crossings to these Georgia points and are there delivered, the original transportation contract is complete, nor can petitioners require or compel the carriers beyond those cities to accept the grain, grain products, or hay, when so reforwarded, on a charge less than the transportation rates applying from those cities proper. But clearly, unless proportions of through rates are taken beyond the point of reshipment, the protection of the through rate, which is the essence of the reshipping arrangement, can not be accomplished. They therefore aver that, while apparently free to choose as between the discontinuance of the arrangement at Nashville and its extension at the other points hereinbefore named, in truth there is no such choice, and the enforcement of the commission's order must of necessity mean the destruction of the arrangement at Nashville, and this, as shown by the overwhelming and uncontradicted evidence, can not be done without the gravest consequences in the way of disturbance of trade, impairment of industries, and great injury to all interests, without, as they aver, any equivalent benefit to complainants before the commission, those whom they represent, or anyone else.

97 6. Petitioners aver that the uncontradicted evidence in the proceeding before the commission shows, and it is the fact, that the Cumberland River is a navigable stream, navigable from its confluence with the Ohio River up beyond Nashville, more than 190 miles, for all craft for nine or ten months of the year, coinciding with the grain season, and for smaller craft throughout the year, and the location of Nashville, Tennessee, on the Cumberland River gives and has at all times given to that city and the merchants there located efficient means of transportation by water from Evansville, Indiana, Cairo, Illinois, St. Louis, Missouri, and other northern and western grain centers and markets, and from the grain-producing territories in the West and Northwest; that there are now numerous towboats and three lines of steamboats regularly plying the Cumberland River, and competing with your petitioners for the transportation of grain traffic and traffic in other commodities from said Evansville, Cairo,

St. Louis, and other western markets, to Nashville and that the said river is capable of transporting to Nashville all of the grain consumed in Nashville, or shipped south therefrom; that none of the Georgia towns mentioned in the order of the commission is situated as is Nashville so as to enjoy means of transportation by water from or to any of the northern and western grain centers, or from the surplus-grain producing territory of the North and West; and Nashville is nearer to said centers and territory than Atlanta, which is next, by a distance of 289 miles.

7. Petitioners aver that the uncontradicted evidence in the
98 said proceeding shows, and it is the fact, that petitioners are now, and have for many years been actually engaged in competition for the transportation of grain and other western products from northern and western points to Nashville, Tennessee, and to points south and southeast of Nashville, Tennessee; that in their endeavors to obtain the movement of said traffic for their respective lines of railway, they are now and have for many years been compelled to meet the competition of boats operating in the Cumberland River; that the competition of said boats in the Cumberland River is now and has at all times been active and controlling in respect to traffic important in amount; that many years ago your petitioners established the reshipping arrangement on grain at Nashville herein described for the purpose of meeting the competition of said boats in the Cumberland River; that the said reshipping arrangement was then and is now necessary to meet the said boat competition; and that said reshipping arrangement was then and is now the only means whereby your petitioners could or can effectively and efficiently meet the said boat competition and control a reasonable proportion of the grain traffic moving from the west to Nashville, and to points southeast and south of Nashville, Tennessee, for their respective lines as against the boats in the Cumberland River.

Petitioners further aver that the reshipping arrangement herein referred to was inaugurated by them at Nashville solely for the purpose of meeting the competition of boats in the Cumberland River; that the said reshipping arrangement was necessary to meet that competition, and that it has substantially accomplished the
99 purpose for which it was established; and that these facts are in evidence in said proceeding and were uncontradicted.

8. Petitioners further aver that the uncontradicted evidence introduced in the proceeding before the commission shows, and it is a fact, that the said arrangement was not sought by Nashville interests, and was not adopted by the carriers for the purpose of giving Nashville any advantage over any other locality or person in any other locality, but was an expedient which the carriers found themselves compelled to adopt in order to compete with vessels operated on the Mississippi, Ohio, and Cumberland Rivers transporting grain to Nashville. In no other way than by the adoption of said arrangement could they have steadily and effectively engaged in such competition and obtained a fair and reasonable proportion of said traffic

to Nashville, and by no other arrangment can they do so now, and in no other manner can they preserve, without serious impairment, the value of their lines, and particularly their lines west of Nashville, which parallel and immediately compete with the Cumberland River, a navigable and important waterway.

They aver that it was their legal right to establish, and that it is legal right to maintain, said arrangement so as to be able fairly to meet the competition referred to and to obtain a fair and reasonable proportion of said traffic to Nashville; and they aver that the execution of the order of the commission would, by depriving them
100 of the right to meet such competition and to obtain a share of such traffic, deny them the protection guaranteed them by the fifth amendment to the Constitution of the United States.

9. Petitioners aver that the uncontradicted evidence in the said proceeding shows, and it is the fact, that the said commodities can be and have been transported to Nashville, Tennessee, by boats operating on the Cumberland River, and that the withdrawal of the said arrangement at Nashville will result in diverting to the boat lines operating on the Cumberland River a large volume of traffic in these commodities that is now being carried to Nashville by petitioners; that the said diversion and water competition thereby restored will be lasting and controlling, not only in respect to the grain traffic to Nashville and to points south and southeast of Nashville, but with respect to other classes of traffic both when moving southbound to Nashville and when moving northbound from Nashville; and that the result of such diversion of traffic will be to greatly reduce the revenues of petitioners.

10. Petitioners aver that the uncontradicted evidence in the said proceeding shows, and it is the fact, that the said commodities can be and are now concentrated at the Mississippi and Ohio River crossings and shipped to southeastern destinations, among such destinations being the Georgia towns hereinbefore mentioned, under rates corresponding with the total transportation charges which accrue when the commodities are shipped to Nashville and shipped thence to the same destinations, and that the withdrawal of
101 the said arrangement at Nashville will not in any way disable the grain dealers at the said crossings from transporting directly to the said destinations the traffic which is now transported to and rehandled and reshipped from Nashville. The enforcement of the order would create a diversion of traffic, but it would not be a diversion in favor of the Georgia towns but in favor of the towns at and beyond the river crossings, such, for example, as Memphis, Cairo, Evansville, Louisville, Cincinnati, St. Louis, East St. Louis, and Chicago. They aver that the points just named, to which the traffic would be diverted and taken away from Nashville, are all served by other lines of railroad than those owned and operated by petitioners, and that the enforcement of said order would not only greviously injure Nashville, by diverting from Nashville a large volume of grain traffic moving from Nashville to the Southeast, practi-

cally all of which is now transported from Nashville by petitioners, but said traffic would be diverted to Memphis, St. Louis, East St. Louis, Chicago, Cairo, Evansville, Louisville, and Cincinnati, some of which points are not reached by the lines of petitioners, and petitioners would thereby be deprived of an opportunity to compete for such traffic, and as to such towns as are reached by the lines of petitioners, they are also reached by the lines of a number of other and competing railroads, and petitioners aver that the diversion of said traffic from Nashville to the other points above named would result in greatly decreasing the revenues of petitioners, for the reason

102 that while petitioners now obtain practically all of the traffic moving from Nashville to the Southeast, if the traffic is diverted from Nashville to the other points above named petitioners will have to meet at such points the competition of other lines for the traffic, and such other lines will obtain a large part of the traffic that is now handled by petitioners.

They aver that the enforcement of the order would close to the consuming public of the Southeast, one of the important markets to which it now has access, and it would not inure to the benefit of the said Georgia towns, and all of this appears from evidence introduced in said proceeding, which is in the main uncontradicted, but when not uncontradicted, overwhelmingly supports the averments just made.

11. Petitioners aver that no evidence was introduced in said proceeding even tending to show that most of the Georgia towns aforesaid are placed at any disadvantage whatever because of reshipping being accorded Nashville and not accorded them. There was not a scintilla of evidence offered touching the conditions in most of the said towns, or touching their relation to Nashville, and hence no basis was afforded, or can be found in the record which was before the commission, for its conclusion that the said arrangement unduly discriminates against the particular towns in question. So far as the few towns are concerned, relative to the conditions in which and their relation to Nashville some evidence was offered, petitioners aver that, according to the great weight of the testimony, it is

103 clearly and palpably apparent that their complaint is groundless; that the arrangement at Nashville does not unduly discriminate against them, and that their status will not be improved by that arrangement being overthrown.

12. Petitioners aver that the volume of grain, grain products, and hay reshipped at Nashville under the arrangement hereinabove set forth is in each year very great, and approximates a weight of 400,000 tons annually carried into and out of Nashville by your petitioners. On this enormous tonnage the revenue accruing annually to each of your petitioners reaches many hundred thousands of dollars, and a diversion of said traffic from Nashville would involve an annual loss to each of your petitioners of untold thousands of dollars.

13. Petitioners aver that there was and is no undue discrimination; that the supplemental report and order of the commission was

wholly unwarranted by the evidence in said proceeding; that the said order is invalid, and it should be so declared.

14. Petitioners further aver that unless the said order hereinbefore referred to be set aside and annulled upon final hearing by this honorable court of this suit, and unless its operation be restrained and suspended by this honorable court, on or before September 1, 1911, and pending the final hearing and determination of this suit, petitioners will be compelled to cancel their reshipping arrangement on grain and grain products at Nashville, Tennessee, hereinbefore referred to, and that the cancellation of the said reshipping arrangement will result in losses of traffic and revenue to your petitioner, the Nashville, Chattanooga & St. Louis Railway, amounting to many thousands of dollars annually, and to your petitioner, the Louisville & Nashville Railroad Company, amounting to many thousands of dollars annually, and will therefore subject your petitioners to great loss and damage, and irreparable injury, for all of which your petitioners are without adequate remedy at law.

104

Petitioners further aver that said losses so sustained by your petitioners will not accrue to the benefit of either the shippers or receivers of grain and grain products, nor to the benefit of the public, in the shape of lower freight rates, nor to the benefit of the complainants in the proceeding before the Interstate Commerce Commission, hereinbefore referred to, but that said amount will be diverted from your petitioners to other competing rail carriers and to competing boat carriers, thus subjecting your petitioners to great loss and damage, and irreparable injury, without any corresponding advantage to any portion of the shipping public.

In view of the premises, petitioners pray that the said order made and entered by the Interstate Commerce Commission on the ninth day of June, 1911, may be set aside and annulled, and that, pending the final hearing and determination of this suit, its operation may be restrained and suspended, and that accordingly, a temporary stay or suspension may be decreed, and an interlocutory injunction be awarded, and that petitioners may have such other further and full relief as the case requires.

105

To this end petitioners pray that the United States of America may be made a party defendant to this suit and required to answer the allegations of this bill, an answer under oath being now expressly waived.

And as in duty bound, petitioners will ever pray.

R. WALTON MOORE,
M. P. CALLAWAY,
Solicitors and Counsel for Nashville, Chattanooga and St. Louis Railway.

ALBERT S. BRANDEIS,
W. G. DEARING,
Solicitors and Counsel for Louisville & Nashville Railroad Company.

106 UNITED STATES OF AMERICA,
Jefferson County, State of Kentucky, ss:

Personally appeared before me H. C. McLellen, a notary public in and for the aforesaid county and State, C. B. Compton, who being first duly sworn, deposes and says:

That he is traffic manager of the Louisville & Nashville Railroad Company, one of the petitioners in the foregoing petition; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true.

C. B. COMPTON.

Subscribed and sworn to before me this 18th day of August, in the year 1911.

My commission as notary public expires on the 26th day of February, 1912.

In witness whereof, I have hereunto signed my name and affixed my notarial seal this 18th day of August, A. D. 1911.

[NOTARIAL SEAL.] H. C. McLELLEN,
Notary Public in and for Jefferson County, Kentucky.

107 *Notice to Attorney General.*

Returned and filed August 25, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & SAINT LOUIS RAILWAY, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 47.

The President of the United States, to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., a copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 25th day of August, A. D. 1911.

[Seal of the United States Commerce Court.] G. F. SNYDER, *Clerk.*
By W. S. HINMAN, *Deputy Clerk.*

Original of above notice and copy of petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 25th day of August, A. D. 1911. Copy accepted by Mrs. B. M. Power for Mr. Blackburn Esterline, Southern Building.

F. J. STAREK, *Marshal.*

108 *Notice to chairman of Interstate Commerce Commission.*

Returned and filed August 25, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHville, Chattanooga & Saint Louis Railway, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 47.

The President of the United States, to Honorable Judson C. Clements as chairman of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., a copy of which is herewith served by filing said copy in the office of the secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 25th day of August, A. D. 1911.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*
By W. S. HINMAN, *Deputy Clerk.*

Original of above notice and copy of petition served upon Hon. Judson C. Clements, chairman of the Interstate Commerce Commission, this 25th day of August, A. D. 1911. Accepted by J. H. Howell.

F. J. STAREK, *Marshal.*

109 *Appearance.*

Filed August 31, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 46.

APPEARANCE.

To Mr. G. F. Snyder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as a party respondent and of myself as its solicitor.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Dated at Washington, D. C., August 31, 1911.

110 *Appearance.*

Filed August 31, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners,
v.
UNITED STATES OF AMERICA RESPONDENT. } No. 47.

APPEARANCE.

To Mr. G. F. Snyder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as a party respondent and of myself as its solicitor.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

Dated at Washington, D. C., August 31, 1911.

111 *Order extending time to answer.*

Entered September 21, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERstate Commerce Commission, intervening respondent, and other respondents. } No. 46.

ORDER EXTENDING TIME TO ANSWER.

On application of counsel for the United States, it is ordered that the time within which the respondent and the intervening respondents may file their answers to the petition in the above-entitled cause be and the same is hereby extended to and including October 10, 1911.

MARTIN A. KNAPP,
Presiding Judge.

112 *Order extending time to answer.*

Entered September 21, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERstate Commerce Commission, intervening respondent, and other intervening respondents. } No. 47.

ORDER EXTENDING TIME TO ANSWER.

On application of counsel for the United States, it is ordered that the time within which the respondent and the intervening respondents may file their answers to the petition in the above-entitled cause be and the same is hereby extended to and including October 10, 1911.

MARTIN A. KNAPP,
Presiding Judge.

113 *Amendment to petition of Nashville Grain Exchange et al.*

Filed September 22, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
versus
UNITED STATES OF AMERICA, RESPONDENT.
} In equity. No. 46.

AMENDMENT TO PETITION.

To the honorable judges of the United States Commerce Court:

The Nashvill Grain Exchange and the Nashville Board of Trade, petitioners in the above-entitled cause, show unto the court as follows:

Petitioners heretofore filed their original petition in the above-entitled cause in this court, which petition has not yet been made the subject of demurrer, plea, answer, or motion.

In Paragraph V of said original petition, which begins on page 17 and ends on page 19 of said petition as printed and filed in this
114 cause, petitioners referred to and described the rebilling or reshipping practice maintained by the rail carriers at Nashville.

Petitioners now desire and propose to amend, and do amend, said original petition by striking therefrom all of said Paragraph V and substituting in lieu thereof, as Paragraph V of said petition, the following:

V.

"Petitioners aver that the uncontradicted evidence before the commission showed, and the truth is, that said reshipping practice maintained by the rail lines at Nashville, and held by the commission to be a discrimination against the complaining Georgia points, was and had for more than forty years been [and it is now], as follows, and only as follows, to wit: On grain, grain products, and hay shipped to Nashville by rail from or through Ohio and Mississippi River crossing points (Cincinnati, Louisville, Evansville, Hickman, Paducah, Cairo, etc.), the full local rate from said crossing points to Nashville is paid; and these shipments may then be stopped at Nashville for a period of not exceeding six months, during which they may be re-

billed and reshipped to destinations in southeastern and Carolina territory; and on such shipments so rebilled the freight charges into and out of Nashville are readjusted so that the total transportation charge on any one shipment from any given Ohio or Mississippi River crossing point via Nashville to any given destination in said territory, shall exactly correspond with the transportation charge legally assessable on that shipment had it been billed and moved through from its point of origin at the said Ohio or Mississippi River crossing point to its final destination without having been stopped in transit at Nashville at all.

"For example, the local rate on said commodities from said
115 river crossing points to Nashville is ten cents per 100 pounds, the rate from Nashville to Atlanta on said commodities is seventeen cents per 100 pounds. The through rate from said river crossing points to Atlanta is twenty-four cents per 100 pounds, or three cents less than the sum of the local rate from the river crossing point into Nashville and the local rate out of Nashville to Atlanta. Under said reshipping practice at Nashville the through rate of twenty-four cents is there protected by the rail carriers on said shipments, although it may have been stopped in transit at Nashville, as above shown. The full local rate of ten cents having been paid the rail carriers at the time the shipment into Nashville occurred, a readjustment of the total transportation charge is made when the shipment out occurs, so that the shipper ultimately pays upon said commodities reshipped at Nashville the through rate instead of the combination of local rates into and out of Nashville on said shipment. In just the same way, the through rate from the Ohio or Mississippi River crossing points is, by said reshipping practice, protected at Nashville on said shipments when rebilled out of Nashville to other points in southeastern and Carolina territory to which through rates from said river crossing points are in effect.

"All the complaining Georgia points are, and ever since long before the filing of their original complaint with the commission in this case have been, points to which through rates on said commodities are in effect from all said Ohio and Mississippi River crossing points; and each of said complaining Georgia points has the same any-quantity through rates on said commodities from any or all of said Ohio and Mississippi River crossing points that are available to Nashville by reason of the reshipping practice, and that would not be available to Nashville and the shippers at Nashville but for said reshipping practice; and each of said complaining Georgia points, and the shippers thereof, can and do ship and move said commodities from or through any of said Ohio and Mississippi River crossing points, via Nashville,
to any of said complaining Georgia points, at exactly the
116 same and at no greater rates than Nashville and the shippers at Nashville can, by reason of the reshipping practice, do the same thing. So that, so far as through shipments of said commodities from or through any of said Ohio and Mississippi River crossing points, or from Nashville, to any of said complaining Georgia

points are concerned, there is an absolute and perfect equality between said Ohio and Mississippi River crossing points and Nashville and Nashville's shippers with the reshipping practice in force, on the one hand, and all the complaining Georgia points and the shippers thereof, on the other hand.

"And with respect to any and all points in southeastern and Carolina territory, whose rates from said Ohio and Mississippi River crossing point base upon any of the complaining Georgia points; that is, whose rates from said river crossing points are made up by adding together the through rate from said Ohio or Mississippi River crossing points to any of the complaining Georgia points and the local rate out to them from any of the complaining Georgia points—perfect and absolute equality of rates exists between said Ohio and Mississippi River crossing points and Nashville and its shippers with the reshipping practice in force, on the one hand, and the complaining Georgia points and the shippers thereof, on the other hand.

"And with respect to all shipments of said commodities moving through direct to destination without being stopped in transit, from or through any of said Ohio or Mississippi River crossing points via Nashville to any of said complaining Georgia points, or to any other points whatsoever in the State of Georgia, or anywhere else in all southeastern and Carolina territory—perfect and absolute equality of rates exists between said Ohio and Mississippi River crossing points and Nashville and its shippers, under the reshipping practice, on the one hand, and the complaining Georgia points and the shippers thereof, on the other hand.

"The only effect of the reshipping practice at Nashville is to
117 put Nashville and her rates and ability to reach points in southeastern and Carolina territory with shipments of grain moving to Nashville from or through any of said Ohio or Mississippi River crossing points, on exactly the same basis and equality with said Ohio and Mississippi River crossing points, in the same class with which Nashville belongs, because Nashville is exactly similarly circumstanced as said Ohio and Mississippi River crossing points with respect to water and rail competition as to said shipments, and with respect to the moving, marketing, handling, and shipping of such grain, grain products, and hay; and none of the complaining Georgia points are at all similarly circumstanced as respects these things with Nashville and said Ohio and Mississippi River crossing points.

"The rates on grain, grain products, and hay make and break on the Ohio and Mississippi River crossings; and in addition to this all said river crossing points have said reshipping practice exactly the same in form, practice, substance, principle, and effect as Nashville, for the purpose of equalizing each of said river crossings with the other with respect to the shipment of said commodities from or through said points into southeastern and Carolina territory. The result is that any and all of said Ohio and Mississippi River crossing points, and the dealers and shippers thereof, are free to stop said com-

modities in transit, and hold them six months, or even longer in some instances, in a state of rest at said points, and there deal with them as they please, and then send such shipments on by rail to any point in southeastern or Carolina territory, via Nashville, or via other points, and other rail lines than those entering Nashville, on exactly the same any-quantity through rate that Nashville enjoys by reason of the reshipping practice there in effect. And unless Nashville has and can retain the reshipping practice on said commodities, it can not compete in southeastern and Carolina territory with said Ohio and Mississippi River crossing points, nor can the rail lines entering Nashville from said Ohio and Mississippi River crossing points
118 and running on into southeastern territory, compete with the other rail lines which do not enter Nashville, but which serve said Ohio and Mississippi River crossing points and said southeastern territory, by routes other than via Nashville, with respect to such shipments; and as before stated, with respect to such shipments, Nashville is in all things exactly similarly situated and circumstanced with said Ohio and Mississippi River crossing points as regards water and rail competition, and as regards the shipping, handling, and marketing of such grain, grain products, and hay.

"The only alleged or suggested inequality or advantage, and the only possible inequality or advantage, that said reshipping practice at Nashville produces or can produce with respect to the complaining Georgia points, results indirectly from the fact that said reshipping practice at Nashville only operates to put Nashville on an absolute parity and equality with said Ohio and Mississippi River crossing points with respect to through rates on shipments of said commodities from said river crossing points, via Nashville, into southeastern and Carolina territory. If shippers at the complaining Georgia points desire to stop said commodities in transit for a time at said points, and then desire to ship said commodities on to some point (or points basing thereon) whose rate does not base on any one of said complaining Georgia points, and to some point which is a competitive point with the complaining Georgia point, and which is itself a basing point enjoying a through rate upon said commodities from the Ohio and Mississippi River crossing points less than the combination of rates from said river crossing points into and out of said complaining Georgia point to the competitive basing point, would be—then, of course, the complaining Georgia point, in such a case, not having the reshipping practice, could not, after stopping in transit the movement of said commodities at the complaining Georgia point, reship said commodities to said competitive basing point (or points basing thereon), on the basis of the through rate that said
119 competitive basing point enjoys from the Ohio and Mississippi River crossings. In such cases, the complaining Georgia point and the shippers thereof, if said commodities had been there stopped in transit, would have to pay the combination of the rate from the Mississippi or Ohio River crossing point to it, and the rate from it out to the competitive basing point (or points basing

thereon)—which would amount, in such cases, to a higher total charge than the through rate from said Ohio or Mississippi River crossing points to said competitive basing point (or points basing thereon) would be.

"For instance, Griffin, Ga., and Newnan, Ga., are, like all the complaining Georgia points themselves, points which enjoy through competitive rates upon said commodities from the Ohio and Mississippi River crossing points, which through rates are less than the combination of rates made by adding the through rate from said Mississippi or Ohio River crossings to Atlanta to the local rate from Atlanta out to Griffin or Newnan.

"To illustrate, the through rate from the Ohio River crossing points to Atlanta upon said commodities is 24 cents. The local rate from Atlanta out to Griffin or Newnan is eight cents. The through rate from said Ohio River crossing points to Griffin or Newnan is 29 cents, or 3 cents less than the Atlanta combination. Nashville dealers, by said reshipping or stoppage-in-transit practice, being equalized with the Ohio River crossing points, can stop said commodities at Nashville, when they have moved there from or through said Ohio River crossing points, and then reship the same to Griffin or Newnan on the basis of the through 29 cents rate. While Atlanta dealers or shippers could order and have said commodities moved through from said Ohio River crossing points via Atlanta to Griffin or Newnan, at the same 29-cent through rate, if there was no stoppage in transit at Atlanta, nevertheless, if Atlanta dealers stopped said shipment in transit at Atlanta, and then subsequently desired to reship the same out to Griffin or Newnan, upon such a shipment, not possessing said reshipping practice, they would
120 have to pay the 24 cents through rate from said Ohio River crossing point to Atlanta and the 8-cent local rate from Atlanta out to Griffin or Newnan, which would aggregate 32 cents, or 3 cents more than the through rate from said Ohio River crossing point to Griffin or Newnan.

"It is only in such cases where the complaining Georgia point stops in transit said commodities at the complaining Georgia point and then desires to ship said commodities out to a competitive basing point (or points basing thereon), which has a through rate from said Ohio and Mississippi River crossings less than the combination of the rates on the complaining Georgia point that any seeming disadvantage, ascribable to the reshipping practice at Nashville, can or does result. And in such cases all the Mississippi and Ohio River crossing points and Nashville, which is equalized with said similar crossing points by having the reshipping practice, could reach said competitive basing points with shipments of said commodities from any of them on the basis of the through rate from said Ohio and Mississippi River crossings to said competitive basing point, which through rate would, as stated, be less than the combination of rates made by adding together the through rate from said Ohio or Mississippi River crossing point to said complaining Georgia point and the

local rate from it out to said competitive basing point; and in the instances cited of Atlanta reshipping to Griffin or Newnan said difference would be 3 cents per 100 pounds.

121 "And it is only when said commodities are stopped in transit at one of the complaining Georgia points, and it is subsequently desired to reship the same to one of these competitive basing points, or points basing thereon, which have through competitive rates from the Ohio and Mississippi River crossings, just as the complaining Georgia points have, that the reshipping practice at Nashville, of itself, has any effect whatsoever upon transportation charges at any of the complaining Georgia points. And then, as above shown, said reshipping practice does absolutely no more than equalize Nashville and its shippers and carriers with the shippers, carriers, and points at the various Ohio and Mississippi River rail crossings, all of which can and do reach each and every point in all southeastern and Carolina territory exactly as Nashville does with its reshipping practice.

"Petitioners aver that said reshipping practice upon grain, grain products and hay, adjudged by the commission to be unlawfully extended by the carriers, at Nashville, because discriminatory against the Georgia points named, has been so allowed and extended by the carriers there for more than forty years; and during all this time this reshipping practice has been continuously extended at Nashville, not voluntarily by the carriers, nor for the purpose of giving any favor or preference to the Nashville market or dealers; nor was said reshipping practice originally sought by Nashville grain dealers; nor was the same originally adopted, nor has it been since continued, by the carriers, for the purpose of giving Nashville or Nashville dealers any artificial or undue advantage over any other

122 locality or persons in any other locality. Petitioners aver that more than forty years ago this reshipping practice was begun at Nashville, and that it has been continuously since extended by the carriers at Nashville in response to inexorable competitive conditions at Nashville, and in response to the inexorable contingencies and exigencies at Nashville incident to the handling and carriage of grain. The allowance of this reshipping practice at Nashville was begun by the rail lines serving the Nashville market, and has ever since been continued, at Nashville, as an expedient forced upon these carriers involuntarily and in self-preservation, to enable them to compete with steamboats and barges transporting grain, grain products, and hay by the Mississippi and Ohio Rivers and by the Cumberland River, to Nashville. In no other way than by the adoption and continuance of said reshipping arrangement could these rail lines have steadily, effectively, and profitably engaged in competition with these boats; and by no other arrangement now can these rail lines effectively and profitably meet and reckon with this river competition, without serious impairment to the value of their lines, and particularly their lines west of Nashville, which parallel and immediately compete with the Cumberland River, a navi-

gable and important waterway, upon the banks of which the city of Nashville is located.

"Before there were any rail connections between Nashville and the river gateways, such as Cincinnati, Louisville, Evansville, Paducah, Cairo, Hickman, etc., and before there was even any rail connection between any of these river crossings and Atlanta and the Southeast, the Nashville & Chattanooga Railroad was completed from Nashville to Chattanooga as early as 1854. The cities of Charleston and Savannah contributed largely to the completion of this road, and its connection with Atlanta and the seaboard, for the purpose, expressed at the time, of connecting the cotton producing sections of the country with the grain fields of the West.

123 "This line from Augusta, Charleston, and Atlanta is the shortest line from the Southeast to the western grain country; and this line was completed up northward to Nashville as early as 1854; and this was before there was any rail connection between Nashville and the Southeast, on the one hand, and Cairo or Evansville or Louisville or Cincinnati, on the other hand. The Chattanooga Railroad, as soon as it was completed up to Nashville in 1854, was the means by which grain and all western commodities were sent into the Southeast. All this traffic, of necessity, came from the Wabash, Ohio, and Mississippi Rivers up the Cumberland River by steamboat to Nashville, and was there loaded upon this the only rail line into southeastern territory at that time. Thus it was that Nashville first became a concentration point for grain moving through Nashville, as the first rail gateway, and over the Nashville & Chattanooga Railroad, as the first rail line into the Southeast having direct connection with western waterways. Vast amounts of grain and other commodities were thus concentrated at Nashville by the boats on the Cumberland River, and transhipped by this first rail line to Atlanta and other points in southeastern territory. This was long before Cincinnati, Louisville, Cairo, or Paducah, or any of the other river crossings were grain gateways or concentration points at all for trade for southeastern territory.

"There were no rail connections north or west of Nashville until the Louisville & Nashville finished its line between Louisville and Nashville, in 1859. Prior to 1859 grain and all supplies entering the Southeast by rail came up to Nashville by the Cumberland River. After the completion of the Louisville & Nashville Railroad between Nashville and Louisville, in 1859, some grain and other produce came to Nashville through the Louisville gateway over this railroad.

"At this time the Louisville & Nashville Railroad did not extend south of Nashville at all, and did not acquire any line south of Nashville until it leased the road from Nashville to Decatur in 124 1871, and at the same time made a contract to complete the South and North Alabama Railroad, extending from Decatur to Montgomery; it did this last in 1872.

"The Nashville & Chattanooga Railroad did not own a line west or north of Nashville until 1872, when it began to operate 171 miles

of railroad running from Nashville west, and crossing the Tennessee River at Johnsonville, Tenn., and going to the banks of the Mississippi River at Hickman, Ky. Thus in 1872 it was that for the first time the N., C. & St. L. Ry. serving the Nashville market had any direct interest in hauling grain or other commodities all the way from the Mississippi and Ohio Rivers on the west to Atlanta and southeastern territory. Prior to that time the Nashville & Chattanooga road had no interest in how the grain came to Nashville from the Mississippi and Ohio or Wabash Valleys, because it had no lines west or north of Nashville.

"It was at this early time that the reshipping practice was inaugurated at Nashville by the Nashville & Chattanooga Railroad, for the purpose of protecting its through rate from the Mississippi River into the Southeast, via Nashville, in competition with boat lines on the Cumberland River. The Nashville & Chattanooga Railroad at once, after it completed its line west of Nashville, constructed and put in operation free elevators on the Tennessee River at Johnsonville, and on the Mississippi River at Hickman, and there it would endeavor to attract and would receive the grain, and load it on its cars, and get the 171-mile haul up to Nashville, and then carry it on into the Southeast.

"It was found, however, that most of the grain from the Wabash, Mississippi, and Ohio River Valleys continued to come into Nashville by boat, notwithstanding the free elevators at Hickman and Johnsonville, and the efforts of the Nashville & Chattanooga Railroad to have the grain landed at these two last-mentioned places, and there loaded upon its cars.

"The boat and rail rate from the Wabash, Ohio, and Mis-
125 sissippi River grain-producing valleys via Hickman and Johnsonville to Nashville, was higher than the all-river rate accepted by the boats upon grain from these grain sections up to Nashville. The result was that most of the grain continued to come into Nashville by steamboats, and the Nashville & Chattanooga Railroad had to take some steps to meet this situation to protect its railroad, which tapped the Tennessee and Mississippi Rivers west of Nashville, and to procure the longest possible haul of this grain in its passage from the grain-producing sections aforesaid to the grain-consuming territory in the Southeast.

"The Nashville & Chattanooga Railroad could have done this in either one of two ways. It could have fixed and accepted a very low local rate from the river crossings up to Nashville, and thus meet the steamboat competition, or it could have established a through rate from the river crossings to the Southeast, via Nashville, and protect this through rate by extending the reshipping privilege at Nashville. It chose to follow the latter course, in order to better subserve and protect its revenues. A very low local rate up to Nashville would have unnecessarily sacrificed revenue. This low rate would have been applicable to all the grain locally consumed at Nashville, or points basing on Nashville; and, besides, if they had

unduly reduced the local rate up to Nashville, to meet the steamboat competition, to say, six or seven cents on grain, it would have been impossible to have maintained the existing scale of rates on other commodities besides grain, which were going to Nashville in large quantities for local consumption. This is true, because, while there was no immediate connection between the rates on grain and the rates on dry goods and other commodities, there is, after all, a connection—the rates were relative; and if a six-cent local had been accepted from the river crossing up to Nashville as fair on grain, then thirty-five cents probably would not have been fair on first class.

"Therefore, to better protect its revenues, instead of accept-
126 ing a very low local rate on grain from the Mississippi and Ohio Rivers up to Nashville, and by this means meeting the steamboat competition, the Nashville & Chattanooga Railroad adopted the policy of protecting the through rate from the river crossings via Nashville to the Southeast, by establishing the reshipping practice at Nashville, where there was already an active market which had been the concentration point for grain moving into the Southeast ever since the completion of the Nashville & Chattanooga Railroad between Nashville and the Southeast in 1854.

"At Nashville at this time there was already, as above stated, an active grain market. It was at that time a concentration point, and had been since 1854. The reshipping practice, therefore, did not create anything at Nashville. This reshipping practice was but installed at Nashville in deference to the necessities of an active concentration market already existing, and for the purpose of protecting the revenue of the Nashville & Chattanooga Railroad, as before detailed.

"The reshipping practice has existed in Nashville ever since this early time, and it has existed for the same reason that compelled and constrained its first inauguration at Nashville. When the Louisville & Nashville Railroad acquired its lines south of Nashville, it, like the Nashville & Chattanooga Railroad, became interested in the same way in obtaining the longest possible haul of the grain from the Northwest to the Southeast. It, like the Nashville & Chattanooga Railroad, could have met the steamboats competition on the Cumberland River in either of two ways, by accepting a very low local rate between the river crossing and Nashville, or by protecting its through rate by the installation of reshipping at Nashville. For the same reasons that constrained the Nashville & Chattanooga to follow the latter course, the Louisville & Nashville Railroad followed the same course and put in effect the reshipping practice. The same river competition and compelling conditions which con-
127 strained the inauguration of the reshipping practice at Nashville are still present to-day, and for this reason the reshipping practice has been continued at Nashville.

"Petitioners state and show that said reshipping practice at Nashville can not and does not constitute any undue, unjust, or unlawful preference or advantage to Nashville over any of the complaining

Georgia points or the shippers thereof. For, as hereinabove shown, any alleged discrimination existing at Nashville against any of the complaining Georgia points, arises merely from the act of the carriers in putting the reshipping practice into effect at Nashville more than forty years ago, and continuing it ever since, in order to meet the competition existing at Nashville from steamboats and barges on the Cumberland River. Said steamboats and barges can and do bring grain from all said Mississippi and Ohio River crossings to Nashville for six or seven cents per 100 pounds, and sometimes for even less, and make a fair profit in so doing. And with the reshipping practice abolished at Nashville, grain could be brought there by steamboats and barges from any of said Ohio or Mississippi River crossings during the entire grain season, and could there be loaded from said boats to cars upon the rail lines; and then could be transported by the rail lines to any point in said southeastern territory, paying the full local rate out as a local shipment from Nashville to said destinations, and the total transportation charge for the entire movement, including the cost of loading from boats to cars at Nashville and at said river crossing points, would not exceed the through all-rail rates from said Ohio and Mississippi River crossings, via Nashville, to said destinations in said territory, which all-rail through rates are only protected and applied at Nashville by said reshipping practice.

"And even now, with the reshipping practice in effect at Nashville, and for all the years it has there been in effect, said commodities in large quantities actually do move into Nashville from said Ohio and Mississippi Rivers by steamboats and barges, and are then loaded on the rail lines and shipped into said southeastern
128 territory, paying the full local rail rate as a local shipment originating at Nashville and moving out to said destinations in the southeast, in competition with the all-rail through rates from said Ohio and Mississippi River crossings, via Nashville, to said southeastern destinations, which through rates are protected and applied at Nashville by means of the reshipping practice.

"And if the rail carriers at Nashville had not installed and continued the reshipping practice to meet the competition of said steamboats and barges, the only consequence would have been to deflect the traffic at reduced rates to the boat lines transporting the same from said Ohio and Mississippi River crossings to Nashville. And if the boats were doing this business, and all of it, as they would do but for said reshipping practice, these same total rates (boat and rail) available at Nashville to the shippers at Nashville, from any of said Ohio and Mississippi River crossings to any and all destinations in all said southeastern territory, could be maintained, and the same advantages which Nashville now possesses over said complaining Georgia points would still be possessed by Nashville and Nashville shippers, without the existence of the reshipping practice at Nashville at all.

"And the only effect of abolishing the reshipping practice at Nashville would be to deflect the transportation of grain from said Ohio and Mississippi River crossings to Nashville, to said steamboats and barges, and to deflect the transportation of grain, grain products, and hay from or through said Ohio and Mississippi River crossings to southeastern territory to other routes and other rail lines than those serving the Nashville markets, which other lines' rates between said destination are the same as the rates protected at Nashville by the reshipping practice; and thus entail upon the carriers who would be thereby inhibited from meeting the competitive situation at Nashville, although they could do so at a fair margin of profit, the loss which would arise from the disappearance of such business, without in anywise benefiting the public. And there would also, without benefiting anyone, be thus entailed upon the grain shippers and grain dealers at Nashville an enormous damage and property loss hereinafter more fully described and set forth.

"Each and every allegation contained in this amendment or substituted Paragraph V of this petition, with respect to the causes which constrained the origin and have constrained the existence of said reshipping practice at Nashville; with respect to the history of said reshipping practice at Nashville; with respect to the effect of said reshipping practice at Nashville upon all rates or transportation charges applicable at Nashville to said commodities moving from or through Ohio or Mississippi River crossing points, via Nashville, to destinations in southeastern and Carolina territory; with respect to any alleged discriminations or advantages resulting at Nashville from said reshipping practices, as compared with any of said complaining Georgia points; and with respect to all and singular the averments of this Paragraph V of this petition—was established by the tariffs of the carriers, which were introduced in evidence at the hearing of this matter before the commission, and was established by the uncontradicted evidence taken before the commission and heard by the commission at all the hearings of this cause before it; nor were there any tariffs that were then in existence, or that ever were in existence, revealing anything to the slightest degree inconsistent with, or in anywise contradictory of, any of said allegations and averments of this Paragraph V of this petition; nor are there now, nor were there ever, any facts in existence revealing anything to the slightest degree inconsistent with or contradictory of any of said allegations and averments of this Paragraph V of this petition; nor did the commission at any time or place ever inform or make known to either these petitioners or any of the parties before the commission in said proceedings any information or fact known to it or to any member of the commission, revealing anything in the slightest degree inconsistent with or contradictory of any of the allegations and averments of this Paragraph V of this petition.

"And the petitioners will, before concluding the taking of their proof in this case, and as a part of their proof in this case, tender and offer to file a full and complete copy of all the evidence heard

by or taken before the commission in both of the hearings of this cause before it, duly certified by the chairman of the commission to be all of the evidence taken before the commission in this cause."

Premises considered, petitioners pray that respondent and the commission may be given due and lawful notice of the filing of this amendment; that the original petition, as hereby amended, be answered as required by law, but an answer under oath is hereby expressly waived; and that petitioners have the relief prayed for in said original petition, together with such other and general relief as to the court may seem meet and proper.

And as in duty bound, petitioners will ever pray.

PITTS & MCCONNICO,
Solicitors and Counsel for the Nashville Grain Exchange and the Nashville Board of Trade

131 In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission, intervening respondent.	No. 46.

Affidavit to amendment to petition of Nashville Grain Exchange and Nashville Board of Trade.

Filed October 13, 1911.

UNITED STATES OF AMERICA,
State of Tennessee, County of Davidson, ss:

Personally appeared before me, C. R. Cockle, a notary public in and for the aforesaid State and county, S. S. Kerr and Eugene S. Shannon, who, being first duly sworn, depose and say:

132 That affiant S. S. Kerr is the vice president of the Nashville Grain Exchange, and that affiant Eugene S. Shannan is the secretary of the Nashville Board of Trade; and that affiants swore to the original petition heretofore filed in the above entitled cause in this court.

Since the filing of said original petition of the Nashville Grain Exchange and the Nashville Board of Trade in the above-entitled cause in this court an amendment to said original petition has been printed and filed in said cause in this court, which said amendment is contained in a printed pamphlet of eighteen pages, and which said amendment sets forth with detail a section to be substituted and read in lieu of Paragraph V of the original petition herein. Affiants now, for the purpose of properly verifying said amendment to said original petition, state that both affiants have read said amendment to said petition and know the contents thereof, and that the matters therein stated are true; and by way of further and completely identifying the

amendment to the petition, hereby sworn to, a copy of said amendment to said petition is attached to one of the printed copies of this affidavit, which will be filed with the clerk of the Commerce Court in the above-entitled cause.

S. S. KERR.
E. S. SHANNON.

133 Sworn to and subscribed before me this 10th day of October, in the year 1911.

My commission as notary public expires on the 9th day of October, 1915.

In witness whereof I have hereunto signed my name and affixed my notarial seal, this 10th day of October, 1911.

[SEAL.] C. R. COCKLE, *Notary Public.*

134 *Amendment to petition of L. & N. R. R. Co. et al.*

Filed September 22, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY and Nashville, Chattanooga & St. Louis Railway, petitioners, *versus* UNITED STATES OF AMERICA, RESPONDENT.	In equity. No. 57.

AMENDMENT TO PETITION.

To the honorable judges of the United States Commerce Court:

The Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company, petitioners in the above-entitled cause, show unto the court as follows:

The petitioners heretofore filed their original petition in the above-entitled cause in this court, which petition has not yet been made the subject of demurrer, plea, answer, or motion.

In paragraph 4 of said original petition, which begins on page 6 (near the bottom) and ends on page 7 of said petition, as
135 printed and filed in this cause, petitioners refer to and describe rebilling or reshipping practice maintained by the rail carriers at Nashville.

Petitioners now desire, and propose to amend, and do now amend, said original petition by striking therefrom all of said paragraph 4 and by substituting in lieu thereof as paragraph 4 of said petition the following:

IV.

"Petitioners aver that the uncontradicted evidence before the commission showed, and the truth is, that said reshipping practice maintained by the rail lines at Nashville, and held by the commis-

sion to be a discrimination against the complaining Georgia points, was and had for more than forty years been [and it is now], as follows, and only as follows, to wit: On grain, grain products, and hay shipped to Nashville by rail from or through Ohio and Mississippi River crossing points (Cincinnati, Louisville, Evansville, Hickman, Paducah, Cairo, etc.), the full local rate from said crossing points to Nashville is paid; and these shipments may then be stopped at Nashville for a period of not exceeding six months, during which they may be rebilled and reshipped to destinations in southeastern and Carolina territory; and on such shipments so rebilled the freight charges into and out of Nashville are readjusted so that the total transportation charge on any one shipment from any given Ohio or Mississippi River crossing point via Nashville to any given destination in said territory shall exactly correspond with the transportation charge legally assessable on that shipment had it been billed and moved through from its point of origin at the said Ohio or Mississippi River crossing point to its final destination without having been stopped in transit at Nashville at all.

" For example, the local rate on said commodities from said
136 river crossing points to Nashville is ten cents per 100 pounds, the rate from Nashville to Atlanta on said commodities is seventeen cents per 100 pounds. The through rate from said river crossing points to Atlanta is twenty-four cents per 100 pounds, or three cents less than the sum of the local rate from the river crossing point into Nashville and the local rate out of Nashville to Atlanta. Under said reshipping practice at Nashville the through rate of twenty-four cents in there protected by the rail carriers on said shipments, although it may have been stopped in transit at Nashville as above shown. The full local rate of ten cents having been paid the rail carriers at the time the shipment into Nashville occurred, a readjustment of the total transportation charge is made when the shipment out occurs, so that the shipper ultimately pays upon said commodities reshipped at Nashville the through rate instead of the combination of local rates into and out of Nashville on said shipment. In just the same way the through rate from the Ohio or Mississippi River crossing points is, by said reshipping practice, protected at Nashville on said shipments when rebilled out of Nashville to other points in southeastern and Carolina territory to which through rates from said river crossing points are in effect.

"All the complaining Georgia points are, and ever since long before the filing of their original complaint with the commission in this case have been, points to which through rates on said commodities are in effect from all said Ohio and Mississippi River crossing points; and each of said complaining Georgia points has the same any-quantity through rates on said commodities from any or all of said Ohio and Mississippi River crossing points that are available to Nashville by reason of the reshipping practice, and that would not be available to Nashville and the shippers at Nashville but for said reshipping practice; and each of said complaining Georgia points, and

the shippers thereof, can and do ship and move said commodities from or through any of said Ohio and Mississippi River crossing points, via Nashville, to any of said complaining Georgia points,
at exactly the same and at no greater rates than Nashville and
137 the shippers at Nashville can, by reason of the reshipping practice, do the same thing. So that so far as through shipments of said commodities from or through any of said Ohio and Mississippi River crossing points, or from Nashville, to any of said complaining Georgia points are concerned, there is an absolute and perfect equality between said Ohio and Mississippi River crossing points and Nashville and Nashville's shippers with the reshipping practice in force, on the one hand, and all the complaining Georgia points and the shippers thereof, on the other hand.

"And with respect to any and all points in southeastern and Carolina territory—whose rates from said Ohio and Mississippi River crossing points base upon any of the complaining Georgia points, that is, whose rates from said river crossing points are made up by adding together the through rate from said Ohio or Mississippi River crossing points to any of the complaining Georgia points and the local rate out to them from any of the complaining Georgia points—perfect and absolute equality of rates exists between said Ohio and Mississippi River crossing points and Nashville and its shippers with the reshipping practice in force, on the one hand, and the complaining Georgia points and the shippers thereof, on the other hand.

"And with respect to all shipments of said commodities moving through direct to destination without being stopped in transit, from or through any of said Ohio or Mississippi River crossing points via Nashville to any of said complaining Georgia points, or to any other points whatsoever in the State of Georgia, or anywhere else in all southeastern and Carolina territory—perfect and absolute equality of rates exists between said Ohio and Mississippi River crossing points and Nashville and its shippers, under the reshipping practice, on the one hand, and the complaining Georgia points and the shippers thereof, on the other hand.

"The only effect of the reshipping practice at Nashville is to
138 put Nashville and her rates and ability to reach points in southeastern and Carolina territory with shipments of grain moving to Nashville from or through any of said Ohio or Mississippi River crossing points, on exactly the same basis and equality with said Ohio and Mississippi River crossing points, in the same class with which Nashville belongs, because Nashville is exactly similarly circumstanced as said Ohio and Mississippi River crossing points with respect to water and rail competition as to said shipments, and with respect to the moving, marketing, handling, and shipping of such grain, grain products, and hay; and none of the complaining Georgia points are at all similarly circumstanced as respects these things with Nashville and said Ohio and Mississippi River crossing points.

"The rates on grain, grain products, and hay make and break on the Ohio and Mississippi River crossings; and in addition to this all said river crossing points have said reshipping practice exactly the same in form, practice, substance, principle, and effect as Nashville, for the purpose of equalizing each of said river crossings with the other with respect to the shipment of said commodities from or through said points into southeastern and Carolina territory. The result is that any and all of said Ohio and Mississippi River crossing points, and the dealers and shippers thereof, are free to stop said commodities in transit, and hold them six months, or even longer in some instances, in a state of rest at said points, and there deal with them as they please, and then send such shipments on by rail to any point in southeastern or Carolina territory, via Nashville, or via other points, and other rail lines than those entering Nashville, on exactly the same any-quantity through rate that Nashville enjoys by reason of the reshipping practice there in effect. And unless Nashville has and can retain the reshipping practice on said commodities, it can not compete in southeastern and Carolina territory with said Ohio and Mississippi River crossing points, nor can the rail lines entering Nashville from said Ohio and Mississippi
139 River crossing points and running on into southeastern territory, compete with the other rail lines which do not enter Nashville, but which serve said Ohio and Mississippi River crossing points and said southeastern territory, by routes other than via Nashville, with respect to such shipments; and as before stated, with respect to such shipments, Nashville is in all things exactly similarly situated and circumstanced with said Ohio and Mississippi River crossing points as regards water and rail competition, and as regards the shipping, handling, and marketing of such grain, grain products, and hay.

"The only alleged or suggested inequality or advantage, and the only possible inequality or advantage, that said reshipping practice at Nashville produces or can produce with respect to the complaining Georgia points, results indirectly from the fact that said reshipping practice at Nashville only operates to put Nashville on an absolute parity and equality with said Ohio and Mississippi River crossing points with respect to through rates on shipments of said commodities from said river crossing points, via Nashville, into southeastern and Carolina territory. If shippers at the complaining Georgia points desire to stop said commodities in transit for a time at said points, and then desire to ship said commodities on to some point (or points basing thereon) whose rate does not base on any one of said complaining Georgia points, and to some point which is a competitive point with the complaining Georgia point, and which is itself a basing point enjoying a through rate upon said commodities from the Ohio and Mississippi River crossing points less than the combination of rates from said river crossing points into and out of said complaining Georgia point to the competitive basing point, would be—then, of course, the complaining Georgia point, in such a case, not

having the reshipping practice, could not, after stopping in transit the movement of said commodities at the complaining Georgia point, reship said commodities to said competitive basing point (or points basing thereon), on the basis of the through rate that said com-
140 petitive basing point enjoys from the Ohio and Mississippi River crossings. In such cases, the complaining Georgia point and the shippers thereof, if said commodities had been there stopped in transit, would have to pay the combination of the rate from the Mississippi or Ohio River crossing point to it, and the rate from it out to the competitive basing point (or points basing thereon)—which would amount, in such cases, to a higher total charge than the through rate from said Ohio or Mississippi River crossing points to said competitive basing point (or points basing thereon) would be.

"For instance, Griffin, Ga., and Newnan, Ga., are, like all the complaining Georgia points themselves, points which enjoy through competitive rates upon said commodities from the Ohio and Mississippi River crossing points, which through rates are less than the combination of rates made by adding the through rate from said Mississippi or Ohio River crossings to Atlanta to the local rate from Atlanta out to Griffin or Newnan.

"To illustrate, the through rate from the Ohio River crossing points to Atlanta upon said commodities is 24 cents. The local rate from Atlanta out to Griffin or Newnan is eight cents. The through rate from said Ohio River crossing points to Griffin or Newnan is 29 cents, or 3 cents less than the Atlanta combination. Nashville dealers, by said reshipping or stoppage-in-transit practice, being equalized with the Ohio River crossing points, can stop said commodities at Nashville, when they have moved there from or through said Ohio River crossing points, and then reship the same to Griffin or Newnan on the basis of the through 29 cents rate. While Atlanta dealers or shippers could order and have said commodities moved through from said Ohio River crossing points via Atlanta to Griffin or Newnan at the same 29-cent through rate if there was no stoppage in transit at Atlanta. Nevertheless if Atlanta dealers stopped said shipment in transit at Atlanta and then subsequently desired to reship the same out to Griffin or Newnan upon such a shipment not
141 possessing said reshipping practice they would have to pay the 24 cents through rate from said Ohio River crossing point to Atlanta and the 8-cent local rate from Atlanta out to Griffin or Newnan, which would aggregate 32 cents, or 3 cents more than the through rate from said Ohio River crossing point to Griffin or Newnan.

"It is only in such cases where the complaining Georgia point stops in transit said commodities at the complaining Georgia point and then desires to ship said commodities out to a competitive basing point (or points basing thereon) which has a through rate from said Ohio and Mississippi River crossings less than the combination of the rates on the complaining Georgia point that any seeming disadvan-

tage ascribable to the reshipping practice at Nashville can or does result. And in such cases all the Mississippi and Ohio River crossing points, and Nashville, which is equalized with said similar crossing points by having the reshipping practice, could reach said competitive basing points with shipments of said commodities from any of them on the basis of the through rate from said Ohio and Mississippi River crossings to said competitive basing point, which through rate would, as stated, be less than the combination of rates made by adding together the through rate from said Ohio or Mississippi River crossing point to said complaining Georgia point and the local rate from it out to said competitive basing point; and in the instances cited of Atlanta reshipping to Griffin or Newnan said difference would be 3 cents per 100 pounds.

142 "And it is only when said commodities are stopped in transit at one of the complaining Georgia points, and it is subsequently desired to reship the same to one of these competitive basing points (or points basing thereon), which have through competitive rates from the Ohio and Mississippi River crossings, just as the complaining Georgia points have, that the reshipping practice at Nashville, of itself, has any effect whatsoever upon transportation charges at any of the complaining Georgia points. And then, as above shown said reshipping practice does absolutely no more than equalize Nashville and its shippers and carriers, with the shippers, carriers, and points at the various Ohio and Mississippi River rail crossings, all of which can and do reach each and every point in all southeastern and Carolina territory exactly as Nashville does with its reshipping practice.

"Petitioners aver that said reshipping practice upon grain, grain products, and hay, adjudged by the commission to be unlawfully extended by the carriers at Nashville, because discriminatory against the Georgia points named, has been so allowed and extended by the carriers there for more than forty years; and during all this time this reshipping practice has been continuously extended at Nashville, not voluntarily by the carriers nor for the purpose of giving any favor or preference to the Nashville market or dealers; nor was said reshipping practice originally sought by Nashville grain dealers; nor was the same originally adopted nor has it been since continued by the carriers for the purpose of giving Nashville or Nashville dealers any artificial or undue advantage over any other locality

143 or persons in any other locality. Petitioners aver that more than forty years ago this reshipping practice was begun at Nashville, and that it has been continuously since extended by the carriers at Nashville in response to inexorable competitive conditions at Nashville, and in response to the inexorable contingencies and exigencies at Nashville incident to the handling and carriage of grain. The allowance of this reshipping practice at Nashville was begun by the rail lines serving the Nashville market, and has ever since been continued at Nashville as an expedient forced upon these carriers involuntarily and in self-preservation, to enable them to com-

pete with steamboats and barges transporting grain, grain products, and hay by the Mississippi and Ohio Rivers and by the Cumberland River to Nashville. In no other way than by the adoption and continuance of said reshipping arrangement could these rail lines have steadily, effectively, and profitably engaged in competition with these boats; and by no other arrangement now can these rail lines effectively and profitably meet and reckon with this river competition without serious impairment to the value of their lines, and particularly their lines west of Nashville, which parallel and immediately compete with the Cumberland River, a navigable and important waterway upon the banks of which the city of Nashville is located.

"Before there were any rail connections between Nashville and the river gateways, such as Cincinnati, Louisville, Evansville, Paducah, Cairo, Hickman, etc., and before there was even any rail connection between any of these river crossings and Atlanta and the Southeast, the Nashville & Chattanooga Railroad was completed from Nashville to Chattanooga, as early as 1854. The cities of Charleston and Savannah contributed largely to the completion of this road, and its connection with Atlanta and the seaboard for the purpose, expressed at the time, of connecting the cotton-producing sections of the country with the grain fields of the West.

144 "This line from Augusta, Charleston, and Atlanta is the shortest line from the Southeast to the western grain country; and this line was completed up northward to Nashville as early as 1854; and this was before there was any rail connection between Nashville and the Southeast, on the one hand, and Cairo or Evansville or Louisville or Cincinnati, on the other hand. The Chattanooga Railroad, as soon as it was completed up to Nashville, in 1854, was the means by which grain and all western commodities were sent into the Southeast. All this traffic, of necessity, came from the Wabash, Ohio, and Mississippi Rivers up the Cumberland River by steamboat to Nashville, and was there loaded upon this, the only rail line into southeastern territory at that time. Thus it was that Nashville first became a concentration point for grain moving through Nashville, as the first rail gateway, and over the Nashville & Chattanooga Railroad, as the first rail line into the Southeast having direct connection with western waterways. Vast amounts of grain and other commodities were thus concentrated at Nashville by the boats on the Cumberland River, and transhipped by this first rail line to Atlanta and other points in southeastern territory. This was long before Cincinnati, Louisville, Cairo, or Paducah, or any of the other river crossings were grain gateways or concentration points at all for trade for southeastern territory.

"There were no rail connections north or west of Nashville until the Louisville & Nashville finished its line between Louisville and Nashville in 1859. Prior to 1859 grain and all supplies entering the Southeast by rail came up to Nashville by the Cumberland River. After the completion of the Louisville & Nashville Railroad between

Nashville and Louisville in 1859 some grain and other produce came to Nashville through the Louisville gateway over this railroad.

"At this time the Louisville & Nashville Railroad did not extend south of Nashville at all, and did not acquire any line south of Nashville until it leased the road from Nashville to Decatur in
145 1871, and at the same time made a contract to complete the South and North Alabama Railroad, extending from Decatur to Montgomery; it did this last in 1872.

"The Nashville & Chattanooga Railroad did not own a line west or north of Nashville until 1872, when it began to operate 171 miles of railroad running from Nashville west, and crossing the Tennessee River at Johnsonville, Tenn., and going to the banks of the Mississippi River at Hickman, Ky. Thus in 1872 it was that for the first time the N., C. & St. L. R'y serving the Nashville market had any direct interest in hauling grain or other commodities all the way from the Mississippi and Ohio Rivers on the west to Atlanta and southeastern territory. Prior to that time the Nashville & Chattanooga road had no interest in how the grain came to Nashville from the Mississippi and Ohio or Wabash Valleys, because it had no lines west or north of Nashville.

"It was at this early time that the reshipping practice was inaugurated at Nashville by the Nashville & Chattanooga Railroad for the purpose of protecting its through rate from the Mississippi River into the Southeast via Nashville, in competition with boat lines on the Cumberland River. The Nashville & Chattanooga Railroad at once, after it completed its line west of Nashville, constructed and put in operation free elevators on the Tennessee River at Johnsonville, and on the Mississippi River at Hickman, and there it would endeavor to attract, and would receive, the grain, and load it on its cars, and get the 171-mile haul up to Nashville, and then carry it on into the Southeast.

"It was found, however, that most of the grain from the Wabash Mississippi, and Ohio River Valleys continued to come into Nashville by boat, notwithstanding the free elevators at Hickman and Johnsonville, and the efforts of the Nashville & Chattanooga Railroad to have the grain landed at these two last-mentioned places, and there loaded upon its cars.

"The boat and rail rate from the Wabash, Ohio, and Mis-
146 sissippi River grain-producing valleys via Hickman and Johnsonville to Nashville was higher than the all-river rate accepted by the boats upon grain from these grain sections up to Nashville. The result was that most of the grain continued to come into Nashville by steamboats, and the Nashville & Chattanooga Railroad had to take some steps to meet this situation to protect its railroad which tapped the Tennessee and Mississippi Rivers west of Nashville, and to procure the longest possible haul of this grain in its passage from the grain-producing sections aforesaid to the grain-consuming territory in the Southeast.

"The Nashville & Chattanooga Railroad could have done this in either one of two ways. It could have fixed and accepted a very low local rate from the river crossings up to Nashville, and thus meet the steamboat competition, or it could have established a through rate from the river crossings to the Southeast via Nashville and protect this through rate by extending the reshipping privilege at Nashville. It chose to follow the latter course, in order to better subserve and protect its revenues. A very low local rate up to Nashville would have unnecessarily sacrificed revenue. This low rate would have been applicable to all the grain locally consumed at Nashville or points basing on Nashville; and, besides, if they had unduly reduced the local rate up to Nashville to meet the steamboat competition to, say, six or seven cents on grain, it would have been impossible to have maintained the existing scale of rates on other commodities besides grain, which were going to Nashville in large quantities for local consumption. This is true, because, while there was no immediate connection between the rates on grain and the rates on dry goods and other commodities, there is, after all, a connection—the rates were relative, and if a six-cent local had been accepted from the river crossing up to Nashville as fair on grain, then thirty-five cents probably would not have been fair on first class.

"Therefore, to better protect its revenues, instead of accepting
147 a very low local rate on grain from the Mississippi and Ohio Rivers up to Nashville, and by this means meeting the steamboat competition, the Nashville & Chattanooga Railroad adopted the policy of protecting the through rate from the river crossings via Nashville to the Southeast by establishing the reshipping practice at Nashville, where there was already an active market which had been the concentration point for grain moving into the Southeast ever since the completion of the Nashville & Chattanooga Railroad between Nashville and the Southeast in 1854.

"At Nashville at this time there was already, as above stated, an active grain market. It was at that time a concentration point, and had been since 1854. The reshipping practice, therefore, did not create anything at Nashville. This reshipping practice was but installed at Nashville in deference to the necessities of an active concentration market already existing and for the purpose of protecting the revenue of the Nashville & Chattanooga Railroad, as before detailed.

"The reshipping practice has existed in Nashville ever since this early time, and it has existed for the same reason that compelled and constrained its first inauguration at Nashville. When the Louisville & Nashville Railroad acquired its lines south of Nashville, it, like the Nashville & Chattanooga Railroad, became interested in the same way in obtaining the longest possible haul of the grain from the Northwest to the Southeast. It, like the Nashville & Chattanooga Railroad, could have met the steamboats' competition on the Cumberland River in either of two ways—by accepting a very low local rate between the river crossings and Nashville or by protecting its through

rate by the installation of reshipping at Nashville. For the same reasons that constrained the Nashville & Chattanooga to follow the latter course, the Louisville & Nashville Railroad followed the same course and put in effect the reshipping practice. The same river competition and compelling conditions which constrained the in-
148 auguration of the reshipping practice at Nashville are still present to-day, and for this reason the reshipping practice has been continued at Nashville.

"Petitioners state and show that said reshipping practice at Nashville can not and does not constitute any undue, unjust, or unlawful preference or advantage to Nashville over any of the complaining Georgia points or the shippers thereof. For, as hereinabove shown, any alleged discrimination existing at Nashville against any of the complaining Georgia points, arises merely from the act of the carriers in putting the reshipping practice into effect at Nashville more than forty years ago, and continuing it ever since, in order to meet the competition existing at Nashville from steamboats and barges on the Cumberland River. Said steamboats and barges can and do bring grain from all said Mississippi and Ohio River crossings to Nashville for six or seven cents per 100 pounds, and sometimes for even less, and make a fair profit in so doing. And with the reshipping practice abolished at Nashville, grain could be brought there by steamboats and barges from any of said Ohio or Mississippi River crossings, during the entire grain season, and could there be loaded from said boats to cars upon the rail lines; and then could be transported by the rail lines to any point in said southeastern territory, paying the full local rate out as a local shipment from Nashville to said destinations, and the total transportation charge for the entire movement, including the cost of loading from boats to cars at Nashville and at said river crossing points—would not exceed the through all-rail rates from said Ohio and Mississippi River crossings, via Nashville, to said destinations in said territory, which all-rail through rates are only protected and applied at Nashville by said reshipping practice.

"And even now, with the reshipping practice in effect at Nashville, and for all the years it has there been in effect, said commodities in large quantities actually do move into Nashville from said Ohio and Mississippi Rivers by steamboats and barges, and are then loaded on the rail lines and shipped into said south-
149 eastern territory, paying the full local rail rate as a local shipment originating at Nashville and moving out to said destinations in the Southeast, in competition with the all-rail through rates from said Ohio and Mississippi River crossings, via Nashville, to said southeastern destinations, which through rates are protected and applied at Nashville by means of the reshipping practice.

"And if the rail carriers at Nashville had not installed and continued the reshipping practice to meet the competition of said steamboats and barges, the only consequence would have been to deflect the traffic at reduced rates to the boat lines transporting the same

from said Ohio and Mississippi River crossings to Nashville. And if the boats were doing this business, and all of it, as they would do but for said reshipping practice, these same total rates (boat and rail) available at Nashville to the shippers at Nashville, from any of said Ohio and Mississippi River crossings to any and all destinations in all said southeastern territory, could be maintained, and the same advantages which Nashville now possesses over said complaining Georgia points would still be possessed by Nashville and Nashville shippers, without the existence of the reshipping practice at Nashville at all.

"And the only effect of abolishing the reshipping practice at Nashville would be to deflect the transportation of grain from said Ohio and Mississippi River crossings to Nashville, to said steamboats and barges, and to deflect the transportation of grain, grain products, and hay from or through said Ohio and Mississippi River crossings to southeastern territory to other routes and other rail lines than those serving the Nashville markets which other lines' rates between said destination are the same as the rates protected at Nashville by the reshipping practice; and thus entail upon the carriers who would be thereby inhibited from meeting the competitive situation at Nashville, although they could do so at a fair margin of profit, the loss which would arise from the disappearance of such business, without in anywise benefiting the public. And there would also, without benefiting anyone, be thus entailed upon the grain shippers and grain dealers at Nashville, an enormous damage and property loss hereinafter more fully described and set forth.

"Each and every allegation contained in this amendment or substituted Paragraph IV of this petition, with respect to the causes which constrained the origin and have constrained the existence of said reshipping practice at Nashville; with respect to the history of said reshipping practice at Nashville; with respect to the effect of said reshipping practice at Nashville upon all rates or transportation charges applicable at Nashville to said commodities moving from or through Ohio or Mississippi River crossing points, via Nashville, to destinations in southeastern and Carolina territory, with respect to any alleged discriminations or advantages resulting at Nashville from said reshipping practices, as compared with any of said complaining Georgia points; and with respect to all and singular the averments of this Paragraph IV of this petition—was established by the tariffs of the carriers, which were introduced in evidence at the hearing of this matter before the commission, and was established by the uncontradicted evidence taken before the commission and heard by the commission at all the hearings of this cause before it; nor were there any tariffs that were then in existence, or that ever were in existence, revealing anything to the slightest degree inconsistent with, or in anywise contradictory of, any of said allegations and averments of this Paragraph IV of this petition; nor are there now, nor were there ever, any facts in existence revealing anything to the slightest degree inconsistent with or contradictory of any of said allegations

and averments of this Paragraph IV of this petition: nor did the commission at any time or place every inform or make known to either these petitioners or any of the parties before the commission in said proceedings any information or fact known to it or to any member of the commission, revealing anything in the slightest
151 degree inconsistent with or contradictory of any of the allegations and averments of this Paragraph IV of this petition.

"And the petitioners will, before concluding the taking of their proof in this case and as a part of their proof in this case, tender and offer to file a full and complete copy of all the evidence heard by or taken before the commission, in both of the hearings of this cause before it, duly certified by the chairman of the commission to be all of the evidence taken before the commission in this cause."

Premises considered, petitioners pray, that respondent and the commission may be given due and lawful notice of the filing of this amendment: that the original petition, as hereby amended, be answered as required by law, but an answer under oath is hereby expressly waived: and that petitioners have the relief prayed for in said original petition, together with such other and general relief as to the court may seem meet and proper.

And as in duty bound, petitioners will ever pray.

R. WALTON MOORE.
M. P. CALLAWAY.
Solicitors and Counsel for Nashville, Chattanooga & St. Louis Railway.
ALBERT S. BRANDEIS.
W. G. DEARING.
Solicitors and Counsel for Louisville & Nashville Railroad Co.

152 *Affidavit to amendment to petition of L. & N. R. R. Co. et al.*

Filed October 13, 1913.

UNITED STATES OF AMERICA,
State of Kentucky, Jefferson County, ss:

Personally appeared before me, G. W. B. Olmstead, a notary public in and for the aforesaid State and county, C. B. Compton, who, being first duly sworn, deposes and says:

That he is traffic manager of the Louisville & Nashville Railroad Company, one of the petitioners in the case of the Louisville & Nashville Railroad Company et al. v. United States of America, being case No. 47, pending in the United States Commerce Court.

He says that he has read the amendment to petition, heretofore filed in said cause, which covers eighteen pages of printed matter, and that he knows the contents thereof, and, except the matter set forth in the last five lines on page ten thereof, he states that the matters set forth in said amendment to petition are true, and copy of said amendment to petition is attached to this affidavit showing that said lines

are stricken therefrom, and affiant asks that this affidavit be taken as his verification of the amendment to petition, as so corrected.

C. B. COMPTON.

Subscribed and sworn to before me, this 9th day of October, in the year 1911.

My commission as notary public expires on the 24th day of January, 1914.

In witness whereof I have hereunto signed my name and affixed my notarial seal this 9th day of October, A. D. 1911.

[SEAL.] G. W. B. OLMSTEAD.
Notary Public in and for Jefferson County, Kentucky, with seal attached.

153 *Motion to dismiss petition of Nashville Grain Exchange et al. for want of jurisdiction.*

Filed September 23, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERstate Commerce Commission, intervening respondent. | No. 46.

MOTION TO DISMISS FOR WANT OF JURISDICTION.

The United States of America by its Attorney General and the Interstate Commerce Commission by its solicitor move the court to dismiss the petition filed in the above-entitled cause at the petitioners' cost, because—

1. It appears from the petition that the said petitioner, Nashville Grain Exchange (Incorporated), is an organization of grain dealers of Nashville, Tennessee, including in its membership practically all of the dealers in grain, grain products, and hay in said city; and Nashville Board of Trade is a commercial organization of Nashville representing in an organized way the bulk of the substantial business interests of said city; that the order which the petitioners seek
154 to enjoin, set aside, annul, or suspend was entered by the Interstate Commerce Commission in the proceeding before it entitled W. S. Duncan and Company et al. v. The Nashville, Chattanooga and St. Louis Railway et al., No. 1698, in which said proceeding the said petitioners were interveners only; that no order was entered in said cause against the said interveners, or either of them, but that said order was entered against the defendants therein named only; that the acts of Congress creating and defining the jurisdiction of the courts of the United States for the maintenance

of suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission do not provide for the maintenance of this suit as an original proceeding by the petitioners, and this court is without jurisdiction over the parties and is without power to hear and determine the said cause or any part of the same or to proceed therein except to dismiss the said petition for want of jurisdiction in the court to entertain the same.

2. The order which the petitioners seek to enjoin, set aside, annul, or suspend was entered by the Interstate Commerce Commission in the proceeding before it entitled W. S. Duncan and Company et al. v. Nashville, Chattanooga and St. Louis Railway et al., No. 1698, in which said proceeding the said petitioners were intervenors; that no order was entered in said proceeding against the said intervenors, or either of them, but that the said order was entered against

155 the defendants therein named; that two of the said defendants in the said order named have instituted and are now prosecuting in this court an original suit to enjoin, set aside, annul, or suspend the said order of the Interstate Commerce Commission, which said suit is entitled Louisville and Nashville Railroad Company and Nashville and Chattanooga Railway v. United States of America, and numbered 47, reference to which is here made for the particulars thereof; that the said two original suits now pending are based on the same order of the Interstate Commerce Commission and the respective petitioners in each of said original suits are seeking the same relief; that the acts of Congress creating and defining the jurisdiction of the courts of the United States do not provide for the maintenance of more than one original suit to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission, but that the said acts of Congress prohibit the institution and prosecution of more than one original suit for such purpose; and that by reason of the commencement and prosecution by the said Louisville and Nashville Railroad Company and Nashville, Chattanooga and St. Louis Railway of their said original suit aforesaid, numbered 47, this court is without jurisdiction or power to hear and determine this cause as a separate original proceeding and may not proceed therein except to dismiss the said petition for want of jurisdiction in the court to entertain the same.

156 Wherefore these respondents pray that their motion be sustained and that the petition be dismissed at the cost of the petitioners as moved.

GEO. W. WICKERSHAM,
Attorney General of the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

157 *Stipulation to strike certain matter from petition of Nashville Grain Exchange et al.*

Filed September 25, 1911.

In the United States Commerce Court.

NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners, v. UNITED STATES OF AMERICA, RESPONDENT, AND INTERstate Commerce Commission, intervening respondent.	No. 46.

STIPULATION.

It is hereby stipulated and agreed by and between all the parties to the above-entitled cause by their respective solicitors and counsel that the following matter, known as Exhibits A, B, C, I, J, and M, respectively, together with the several introductory statements in the petition praying that said exhibits, and each of them, "be read as a part" of the petition, be stricken out of said petition, and eliminated therefrom.

PITTS & MCCONNICO,
Solicitors for Petitioners.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

158 *Order striking certain matter from petition of Nashville Grain Exchange et al.*

Entered September 25, 1911.

In the United States Commerce Court.

NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE BOARD OF Trade, petitioners, v. UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, intervening respondent.	No. 46.

ORDER ON STIPULATION.

In accordance with the stipulation duly entered into by all the parties and filed in the above-entitled cause—

It is ordered that the following matter, on page 3 of the petition, viz:

"A copy of said original complaint, which was filed with the commission as aforesaid, will be filed, on or before any hearing, marked 'Exhibit A,' and prayed to be read as a part hereof:"

and the following matter on page 4 of the said petition, viz:
"and a copy of this answer will be filed, on or before any hearing, marked 'Exhibit B,' and prayed to be read as a part hereof;"
159 and the following matter on page 4 of the said petition, viz:
"A copy of said answer will be filed, on or before any hearing, marked 'Exhibit C,' and prayed to be read as a part hereof;"
and the following matter on page 11 of the said petition, viz:
"Copies of said answers which the carriers and your petitioners herein thus filed before the commission, together with copies of the exhibits thereto, will be filed, on or before any hearing, marked, respectively, 'Exhibit I' and 'Exhibit J,' and prayed to be read as a part hereof;"
and the following matter on page 15 of the said petition, viz:
"and petitioners here exhibit a full and complete copy of the transcript of all the evidence introduced and presented to the commission at both hearings, which was all the evidence ever before the commission with respect to this matter; and said complete transcript of the evidence will be filed, on or before any hearing, marked 'Exhibit M,' and prayed to be read as a part hereof;"
and each and every part of the same be, and it is hereby, stricken out of the said petition and eliminated therefrom.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

160 *Stipulation to strike certain matter from petition of Louisville & Nashville Railroad Company et al.*

Filed September 25, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, intervener.
No. 47.

STIPULATION.

It is hereby stipulated and agreed, by and between all the parties to the above-entitled cause, by their respective solicitors and counsel, that the following matter contained in the second paragraph of paragraph 13 on page 16 of the printed petition, filed by the petitioners in the above-entitled cause, viz:

"Petitioners offer to produce and file as a part hereof, marked 'Exhibit No. 2,' a transcript of the record of all proceedings before the commission, including pleadings, evidence, exhibits, and orders,

when and if required to do so, the great size and volume of said record being justification for not filing same at this time."
161 be stricken out of the said petition and eliminated therefrom.

ALBERT S. BRANDIES,
Solicitor for Louisville & Nashville Railroad Company.

R. WALTON MOORE,
Solicitor for Nashville, Chattanooga & St. Louis Railway Company.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

162 *Order striking certain matter from petition of Louisville & Nashville Railroad Company et al.*

Entered September 25, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENER. } No. 47.

ORDERED.

In accordance with the stipulation duly entered into by all the parties and filed in the above-entitled cause,

It is ordered, That the following matter contained in the second paragraph of paragraph 13 on page 16 of the printed petition filed by the petitioners in the above-entitled cause, viz:

"Petitioners offer to produce and file as a part hereof, marked 'Exhibit No. 2,' a transcript of the record of all proceedings before the commission, including pleadings, evidence, exhibits, and
163 orders, when and if required to do so, the great size and volume of said record being justification for not filing same at this time:"

be, and the same is hereby, stricken out of the said petition and eliminated therefrom.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

164 *Petition of intervention of W. S. Duncan & Co. et al.*

Filed September 27, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.
vs.
UNITED STATES OF AMERICA.
} No. 47. In equity.

PETITION.

To the honorable the judges of said court:

W. S. Duncan & Co., A. P. Morgan Grain Co., J. D. Frazier & Co., M. L. & M. W. Fain, R. W. Davis & Co., A. C. Wooley & Co., and McCord-Stewart Co., each of whom is engaged in business in the city of Atlanta, Ga., as wholesale dealers in groceries, grain products and like commodities, respectfully represent unto the court:

They were original complainants in the proceedings before the Interstate Commerce Commission in which was issued the order sought to be enjoined and set aside in the above-entitled cause; that said proceeding being that of W. S. Duncan & Company et al vs. Nashville, Chattanooga & St. Louis Railway et al., Interstate Commerce Commission Docket No. 1698.

Wherefore in behalf of themselves and all other complainants before the Interstate Commerce Commission in said proceeding, they pray that they be made intervening parties respondent in this case with all of the rights of original respondents to appear, plead and answer and be represented in this case by their counsel, as provided by the Statute, and in accordance with the practice in equity.

WIMBISH & ELLIS.
Solicitors for Intervening Respondents.
525 Grant Bldg., Atlanta, Ga.

WILLIAM A. WIMBISH, *of Counsel.*

165 *Order granting W. S. Duncan & Co. et al. leave to intervene.*

Entered October 2, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD CO. ET AL.
vs.
UNITED STATES OF AMERICA.
} No. 47. In equity.

PETITION.

Upon reading the petition of W. S. Duncan & Company et al. to be made intervening parties respondent in the above-entitled cause:

It is ordered, That the said W. S. Duncan & Company and other original complainants in the proceeding before the Interstate Com-

merce Commission be and they are hereby made intervening parties respondent in the above-entitled cause, with all of the rights of original respondents to appear, plead, answer, and be represented by their counsel.

MARTIN A. KNAPP,
Presiding Judge.

In open court. This, the 2d day of October, 1911.

166 *Appearance.*

Filed October 2, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD CO. ET AL.
vs.
UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION, respondents; W. S. DUNCAN & CO. et al., intervening respondents. } No. 47. In equity.

PETITION.

To G. F. Snyder, clerk United States Commerce Court:

SIR: Please enter my appearance as counsel for the intervening respondents in the above-entitled cause.

WILLIAM A. WIMBISH,
525 Grant Building, Atlanta, Ga.

This October 2d, 1911.

WIMBISH & ELLIS, *Solicitors.*

167 In the United States Commerce Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND Nashville, Chattanooga and St. Louis Railway, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 47.

Answer of the United States to the petition as amended.

Filed October 4, 1911.

The respondent, The United States, for answer to the petition as amended filed against it in the above-entitled cause, says:

That it admits the petitioner, Louisville and Nashville Railroad Company, is a corporation organized and existing under the laws of the State of Kentucky and is a common carrier engaged in the transportation of interstate commerce; and admits that the Nashville,

Chattanooga and St. Louis Railway is a corporation organized and existing under the laws of the State of Tennessee and is a common carrier engaged in the transportation of interstate commerce.

Further answering the said petition as amended this respondent says that in the year 1908 W. S. Duncan and Company and
168 numerous other complainants at Atlanta, Georgia, and other Georgia points, did file before the Interstate Commerce Commission their certain petition against the said two petitioners and other railroad companies, which petition briefly stated the facts, and which said petition complained that the said common carriers had granted to Nashville, Tennessee, through the adjustment of rates, rules, and regulations, undue preference and advantage in the handling of grain, grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, where complainants were located, and thereby unjustly discriminated against said complainants and others similarly situated, in that Nashville was able to deliver grain and grain products in southeastern territory under such unduly preferential rates and privileges that cities within that territory could not enter into competition; that the said two railroad companies named and the other common carriers, defendants to said complaint, did file their answers in writing to the said petition; that a full hearing was had by said Interstate Commerce Commission in the premises and that in its report in writing, in respect to the matters and things heard and determined by the Interstate Commerce Commission, which states its conclusion, together with its decision, order, or requirement in the premises, it, on June 24, 1909,
found as a fact that the reshipping and rebilling privilege and
169 the application of rates thereunder obtaining at Nashville was an illegal device by means of which grain, grain products, and hay may be transported at less than the tariff rate otherwise applicable thereto; and further, that it gave to Nashville undue and illegal preference and advantage and subjected other points in the Southeast to unjust and unreasonable prejudice and disadvantage. Said report and order of the Interstate Commerce Commission now forms a part of its official record as W. S. Duncan and Company et al. v. Nashville, Chattanooga and St. Louis Railway Company et al. (XVI. Interstate Commerce Commission Reports, 590), and reference is here made to the said report and order for further and full particulars thereof.

Answering further the said petition as amended, respondent alleges that thereafter the Interstate Commerce Commission postponed the effective date of its order in said cause above referred to and held further hearing or hearings upon due notice to all of the parties on the issue presented by the said petition and the answers thereto whether the arrangement at Nashville amounted to undue discrimination as against Atlanta and other southeastern points; that a second full hearing was had and that in its report in writing in respect to the matters and things heard and determined by the Interstate Commerce Commission which states its conclusion

together with its decision, order, or requirement in the prem-
170 ises, it found as a fact on all the information coming to its knowledge that "the granting to dealers at Nashville, in the State of Tennessee, the privilege of rebilling or reshipping grain, grain products, and hay from Nashville, whereby grain moving through Nashville may be unloaded and held not longer than six months and then shipped on at the through rate from origin to final destination instead of at the sum of the rates into and out of Nashville, which rebilling or reshipping privilege has been more particularly described in the report made and filed in this case, while denying said privilege to dealers in Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, is unlawful, and gives undue and unreasonable preference and advantage to Nashville and to the dealers in grain, grain products, and hay located at Nashville, and subjects Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, and the dealers in grain, grain products, and hay located at said cities, to undue and unreasonable prejudice and disadvantage."

And did, on the ninth day of June, A. D. 1911, enter its order in that behalf. Said report and order appears in the official reports of said Interstate Commerce Commission as W. S. Duncan and Com-
pany et al. *v.* Nashville, Chattanooga and St. Louis Railway
171 Company et al. (21 Interstate Commerce Commission Reports, 186), to which reference is made for full and further particulars thereof.

Further answering the said petition as amended, this respondent says that the matters and things therein referred to, and each and all of the same, were fully presented to the Interstate Commerce Commission at the hearings of the said cause hereinabove referred to; that the matters and things referred to in the said petition as amended were matters and things peculiarly within the province of said Interstate Commerce Commission to hear and determine, under the act to regulate commerce, which was the only authorized tribunal to hear and determine the same, and that the said Interstate Commerce Commission did fully hear and determine the same and did give thereto, and to all parts thereof, such deliberation and weight as same were entitled to receive; that in its report in writing in respect to the matters and things so heard and determined by the Interstate Commerce Commission, which states its conclusion, together with its decision, order, or requirement in the premises, as shown in supplemental report in W. S. Duncan and Company et al. v. Nashville, Chattanooga and St. Louis Railway et al. (21 Interstate Commerce Commission Reports, 186), to which reference is here
made, the matters and things referred to in the said petition as
172 amended were fully covered, and the report made and the order entered by the said Interstate Commerce Commission in the premises were and are within the power of that body to make and

enter, and the matters and things alleged in the said petition are insufficient to disturb the same.

Further answering the said petition as amended, and particularly paragraph 11 thereof, this respondent says that southeastern territory includes all of the territory of the United States south and east of the following boundaries: East of the line of the Mobile & Ohio Railroad from Mobile, Alabama, to Corinth, Mississippi (not including Aberdeen or Columbus, Mississippi), and on and south of the Southern Railway from Corinth (but not including Corinth) to and including Chattanooga, Tennessee, thence via Southern Railway to, but not including, Cleveland, Tennessee, thence via an imaginary direct line from Cleveland, Tennessee, through Murphy, North Carolina, to Walhalla, South Carolina, thence via the Southern Railway through Seneca, Anderson, Belton, Abbeville, Greenwood, Newberry, Alston to Columbia, South Carolina, thence south of the Atlantic Coast Line Railroad from Columbia to, but not including, Wilmington, North Carolina.

That by the tariffs duly published and filed as aforesaid by said petitioners with the Interstate Commerce Commission and like published tariffs of the other carriers named as defendants in the
173 supplemental order herein complained of, it appears that the said petitioners and said other carriers are parties to joint through routes and joint through rates from said Mississippi and Ohio River crossings to all, or nearly all, the cities and towns in said southeastern territory; that by joint action the petitioners herein and the other defendants named in said supplemental order fix the joint through rates from said river crossings to points in the southeastern territory and the published practices of said carriers in connection with said through traffic.

That said southeastern territory consumes large quantities of grain, grain products, and hay shipped into it from said river crossings; that in the development of the business of supplying the local demands for said products within said territory the cities of Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, are jobbing centers where grain dealers receive said commodities in car lots and sell and dispose of them to the various other cities and towns throughout said territory in less than carload lots, and that said jobbing and reshipping business in said cities last named has been largely developed within the last few years.

That by the said published tariffs of said petitioners and the other defendants named in said supplemental order, the published joint rates upon said commodities, from said river crossings to junc-
174 tion or common points within said southeastern territory, when applied in connection with the reshipping and rebilling privilege at Nashville are very materially less, to wit, from 3 to 4 cents per 100 pounds less, than are the joint through rates applicable to like traffic when stopped at and reshipped from Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome,

and Athens, where the rebilling and reshipping privilege does not exist; that is to say, when said commodities are shipped from the river crossings, or beyond, to Nashville and are there stopped, stored, rebilled, and reshipped in less than carload lots, or otherwise, to points in southeastern territory, jobbers and dealers in said commodities at Nashville, by reason of said rebilling and reshipping privilege, enjoy much lower rates upon said commodities from point of origin to points of destination in said territory than do the jobbers and dealers in said commodities at the Georgia cities, or either of them, upon like traffic when stopped and reshipped from said Georgia cities.

That said discrimination in favor of Nashville and against the said Georgia cities fully appears by the said published tariffs of the said carriers, filed with the Interstate Commerce Commission as aforesaid, and said tariffs were duly considered by the Interstate Commerce Commission in forming its opinion and reaching its conclusions that said discrimination constituted the undue and
175 unreasonable preference and advantage, and the undue and unreasonable prejudice and disadvantage between Nashville and the other cities named in said order and the jobbers and dealers in said cities, respectively.

That from said published tariffs it also appears that the petitioners, together with the other defendants, named in said order, to wit, Atlantic Coast Line Railroad Company; Atlantic Railroad; Southern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway; Alabama Great Southern Railroad; Georgia Southern & Florida Railway; Illinois Central Railroad Company; Central of Georgia Railway Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway, and S. David Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; and the Western Railway of Alabama, are each and all parties to through routes and joint rates from said river crossings to points in said southeastern territory; that by joint agreement and arrangement in connection with said through routes and joint through rates said petitioners and said other carriers above named can comply with either alternative requirement named in said supplemental order, and that each and all of the carriers above named, together with said petitioners, are necessary parties to this or any proceeding seeking to annul, set aside, or enjoin said supplemental order or any part thereof.

176 And now, having fully answered, this respondent prays that the said petition be dismissed at the petitioners' cost, and for such other and further action as may be appropriate.

GEO. W. WICKERSHAM,
Attorney General of the United States.

JAMES A. FOWLER,
Assistant to the Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

177 In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, intervening respondent. | No. 47.

Answer of the Interstate Commerce Commission.

Filed October 4, 1911.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' amended petition filed herein (hereafter referred to as the petition), for answer thereunto or so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

I.

This respondent admits that the allegations contained in Paragraphs I and II of said petition are true, excepting as they
178 are, or any one of them is, modified or controverted by facts hereinafter set forth in this answer and in Exhibits A and B attached hereto.

II.

This respondent admits that the allegations contained in Paragraph III of said petition are true, excepting as they are, or as any one of them is, modified or controverted by facts set forth herein and in Exhibits A and B hereto.

Further answering said Paragraph III, this respondent says that the complaint of W. S. Duncan & Co. et al., filed with their respondent and referred to in said paragraph, complained, among other things, that the privilege and practice of rebilling and reshipping at Nashville, Tenn., particularly described in Paragraph IV of said petition, operates as an unjust discrimination against Atlanta, Macon, Columbus, and other cities in Georgia, and that said privilege is an unlawful device, whereby the charge for transportation service is lessened, and Nashville is given undue preference and advantage, in violation of the act to regulate commerce and the amendments thereto. That said rebilling and reshipping privilege is set forth in published tariffs filed with said respondent by said petitioners herein and applies to grain, grain products, and hay when shipped from, or beyond, the Mississippi and Ohio River crossings into points south and southeast of Nashville, and particularly into what is known as the southeastern territory.

179 That said southeasten territory includes all of the territory of the United States south and east of the following boundaries: East of the line of the Mobile & Ohio Railroad from Mobile, Ala., to Corinth, Miss. (not including Aberdeen or Columbus, Miss.), and on and south of the Southern Railway from Corinth (but not including Corinth) to and including Chattanooga, Tenn., thence via Southern Railway to, but not including, Cleveland, Tenn., thence via an imaginary direct line from Cleveland, Tenn., through Murphy, N. C., to Walhalla, S. C., thence via the Southern Railway through Seneca, Anderson, Belton, Abbeville, Greenwood, Newberry, Alston to Columbia, S. C., thence south of the Atlantic Coast Line Railroad from Columbia to, but not including, Wilmington, N. C.

That by the published tariffs filed as aforesaid by said petitioners and the published tariffs of the other carriers named as defendants in the supplemental order herein complained of, it appears that the said petitioners and said other carriers are parties to joint through routes and joint through rates from said Mississippi and Ohio River crossings to all, or nearly all, the cities and towns in said southeastern territory; that by joint action the petitioners herein and the other defendants named in said supplemental order fix the joint through rates from said river crossings to points in the southeastern territory and the published practices of said carriers in connection with said through traffic.

180 That said southeastern territory consumes large quantities of grain, grain products, and hay shipped into it from said river crossings; that in the development of the business of supplying the local demands for said products within said territory the cities of Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, are jobbing centers where grain dealers receive said commodities in car lots and sell and dispose of them to the various other cities and towns throughout said territory in less than carload lots, and that said jobbing and reshipping business in said cities last named has been largely developed within the last few years.

That by the published tariffs of said petitioners and the other defendants named in said supplemental order, the published joint rates upon said commodities from said river crossings to junction or common points within said southeastern territory when applied in connection with the reshipping and rebilling privilege at Nashville are very materially less, to wit, from 3 to 4 cents per 100 pounds less than are the joint through rates applicable to like traffic when stopped at and reshipped from Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens where the rebilling and reshipping privilege dose not exist; that is to say, when said commodities are shipped from the river crossings, or beyond, to Nashville, and are there stopped, stored, rebilled,

181 and reshipped in less than carload lots, or otherwise, to points in southeastern territory, jobbers and dealers in said commodities at Nashville, by reason of said rebilling and reshipping

privilege, enjoy much lower rates upon said commodities from point of origin to points of destination in said territory, than do the jobbers and dealers in said commodities at the Georgia cities, or either of them, upon like traffic when stopped and reshipped from said Georgia cities.

That said discrimination in favor of Nashville and against the said Georgia cities fully appears by the said published tariffs of the said carriers, filed with this respondent as aforesaid, and said tariffs were duly considered by this respondent in forming its opinion and reaching its conclusions that said discrimination constituted the undue and unreasonable preference and advantage, and the undue and unreasonable prejudice and disadvantage, between Nashville and the other cities named in said order and the jobbers and dealers in said cities, respectively.

That from said published tariffs it also appears that the petitioners, together with the other defendants named in said order, to wit, Atlantic Coast Line Railroad Co., Atlanta, Birmingham & Atlantic Railroad, Southern Railway Co., the Cincinnati, New Orleans & Texas Pacific Railway, Alabama Great Southern Railroad, Georgia Southern & Florida Railway, Illinois Central Railroad Co.,
182 Central of Georgia Railway Co., St. Louis & San Francisco Railroad Co., Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof, Atlanta & West Point Railroad Co., and the Western Railway of Alabama, are each, and all, parties to through routes and joint rates from said river crossings to points in said southeastern territory; that by joint agreement and arrangement in connection with said through routes and joint through rates said petitioners and said other carriers above named can comply with either alternative requirement named in said supplemental order, and that each and all of the carriers above named, together with said petitioners, are necessary parties to this, or any proceeding seeking to annul, set aside, or enjoin said supplemental order or any part thereof.

This respondent therefore denies the allegations that said petitioners can not comply with all, or either, of the provisions of said supplemental order; but, on the contrary, this respondent alleges that it is within the power of said petitioners, acting jointly with said other carriers, or some of them, to fully comply with either alternative mentioned in said supplemental order, and thereby, in either way, to effectually discontinue said undue and unreasonable preference, advantage, and discrimination.

This respondent shows to the court that said published tariffs, establishing the facts above stated, are, by the provisions in section 16
of the act to regulate commerce as amended, made public rec-
183 ords, and it is provided that they "shall be received as prima facie evidence, of what they purport to be, for the purpose of investigation by the commission and in all judicial proceedings;" and this respondent begs leave to present the same to this honorable court upon the hearing hereof in the event that any of the allegations in this paragraph of its answer are denied.

III.

Further answering said petition, this respondent says that in the proceeding before it, referred to in the petition, styled W. S. Duncan & Co. et al. v. Nashville, Chattanooga & St. Louis Railway et al., wherein said discrimination was complained of as aforesaid, this respondent caused all of the carriers interested in said traffic to be made parties defendant, and this respondent, after due notice to all parties to said investigation, proceeded to hear and investigate the matters and things complained of in said complaint, and also all matters presented in the course of said hearing by the parties thereto; that each and every question and issue raised by the petitioners herein, as affecting said rebilling and reshipping privilege at Nashville, including the extent and effect of said water competition, and the institution of such reshipping privilege at said Georgia cities, were presented and heard; that said investigation was conducted pursuant to and in accordance with the provisions of said act
184 to regulate commerce, as amended, and especially in accordance with the provisions of sections 13, 14, and 15 of said act; that extended hearings were had, at which the parties thereto were represented by counsel, particularly the petitioners herein, in December, 1908, at Washington, D. C.; in February, 1909, at Washington, D. C.; in September, 1910, at Washington, D. C.; and in November, 1910, at Washington, D. C.; that a large volume of testimony amounting to over 750 pages of typewritten matter, together with many maps, reports, and statistics from the records and files of this respondent, were presented to and heard or examined by this respondent, touching all the matters in controversy herein; that the parties to said proceeding, including the petitioners herein, appeared upon several occasions and days by counsel before the respondent and presented extended oral arguments and printed briefs, discussing all and each of the matters in controversy in said proceeding, the matters concerning said rebilling and reshipping privilege and the water competition at Nashville, the institution of said privilege at the Georgia cities, and all and each of the matters and things set forth in the petition herein; that on the 9th day of June, 1911, after full consideration and investigation, this respondent made its report in writing stating its conclusions upon the matters in controversy, together with its decision, order, and requirement in the premises, as by statute it
185 is required to do, which report was duly entered of record and a copy thereof furnished to each party complainant and defendant in said investigation.

That in said investigation and in arriving at its decision therein this respondent, as in duty bound under the law, weighed and considered all the facts and arguments presented by the petitioners herein, by other carriers, and all other parties to said proceeding; that in forming its opinion and arriving at its conclusions this respondent, exercising its administrative functions and powers, considered all pertinent facts and matters set forth in many reports and

statistics on file with said respondent, together with other facts coming to the knowledge of this respondent in the performance of its duties and functions prescribed and set forth in the act to regulate commerce and the amendments thereto pertaining to the privileges of rebilling and reshipping; that from said reports and tariffs it appears that said rebilling and reshipping privileges exist at many interior points where no water competition obtains; it is therefore not competent, nor is it relevant, for said petitioners to allege that any particular fact or facts before this respondent in said proceeding were uncontradicted or conclusive in favor of the petitioners' contention; nor can the petitioners by judicial proceedings ascertain each and all the facts, circumstances, and conditions in regard to said transportation that were necessarily and properly considered by and which aided this respondent in arriving at its conclusion that
186 said practice of rebilling and reshipping said products from Nashville was unduly and unreasonably discriminatory.

This respondent denies that there is, or can be, under the law, any complete record of all the evidence, facts, and circumstances before the commission in determining that this, or any other practice by carriers, is unduly and unjustly discriminatory as between localities or persons, and respondent is advised and so alleges that the determination of said question, as to whether said admitted discrimination is undue and contrary to the provisions of said act to regulate commerce, is one wholly and exclusively within the jurisdiction of this respondent.

This respondent submits its reports and conclusions in said proceeding wherein W. S. Duncan & Co. et al. were complainants and said petitioners et al. were defendants, the first report bearing date of June 24, 1909, copy of which is hereto attached marked Exhibit A, and the supplemental report and order dated June 9, 1911, is hereto attached and marked Exhibit B and made a part of this answer.

IV.

That as to all and several the allegations in said petition not herein specifically answered, this respondent denies that the petitioners are entitled to any relief because:

(a) Where an actual discrimination exists between persons, corporations, or localities, whether such discrimination is unjust and lawful, under the provisions of the act to regulate commerce, is
187 a pure question of fact, the determination of which, with respect to the practices of common carriers engaged in inter-state commerce is by law committed exclusively to this respondent, and its conclusions thereon are not subject to judicial review.

(b) That in determining that the practice of rebilling and reshipping, as permitted at Nashville, constitutes an unjust discrimination as against Atlanta and the other Georgia cities named in said supplemental order the respondent proceeded in the exercise of administrative power, lawfully conferred upon it by the act to regulate com-

merce, and its action in this regard is not open to review in this honorable court.

(c) Whether the circumstances and conditions at Nashville are so substantially dissimilar to those existing at Atlanta and each of the Georgia cities named in said supplemental order, as to justify the preference and discrimination accorded to Nashville in the matter of rebilling and reshipping, is a question of fact exclusively committed by law to the determination of this respondent.

(d) It appears upon the face of the petition and from the reports of this respondent—Exhibits A and B—that the petitioners and other interested parties were accorded a full hearing by this respondent, in the proceeding aforesaid, and that in arriving at, and stating its conclusion, and in making its order therein, this respondent proceeded regularly and within the scope of its authority under the act to regulate commerce.

188 (e) That there are no facts set forth in said petition which show or tend to show that in making the supplemental order complained of this respondent exceeded the power conferred upon it by said act, or acted in any respect irregularly, arbitrarily, or fraudulently.

(f) That should the enforcement of the supplemental order complained of operate to cause a loss in the revenues of the petitioners, or either of them, by reason of inability to otherwise profitably compete for the traffic, carried in boats on the Cumberland River or by other carriers from the river crossings, such loss is, and would be, incidental to the removal of an unlawful discrimination and is not a taking of property without due compensation, prohibited by the fifth amendment to the Constitution of the United States.

(g) That if the discontinuance of said undue and unjust discrimination, by either means set forth in said supplemental order, results in, or occasions, loss to the jobbers and dealers in said commodities in Nashville, such result is not a taking of property without due compensation, prohibited by the fifth amendment to the Constitution of the United States.

(h) That said supplemental order, and either alternative therein, can be reasonably complied with by said petitioners and the defendants named in said order as aforesaid, and therefore said order is not in any respect unreasonable or unlawful.

189 (i) That there is a nonjoinder of proper and necessary parties to this suit, as above set forth.

All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and prays the same advantage as to each and all of the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded or demurred to. And, having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in that behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHAS. W. NEEDHAM, *Solicitor*.

WASHINGTON, *District of Columbia, ss:*

I, Judson C. Clements, member and chairman of the Interstate Commerce Commission, having participated in the said investigation referred to in the foregoing answer and the petition filed herein, and having read the foregoing answer and knowing the contents thereof, hereby make oath that the matters of fact therein stated are true to the best of my knowledge, information, and belief.

(Signed) JUDSON C. CLEMENTS.

Subscribed and sworn to before me, H. S. Milstead, a notary public in and for said District of Columbia, this 3d day of October, 1911.

[SEAL.] H. S. MILSTEAD, *Notary Public.*

190 EXHIBIT A.

191 W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al. } No. 1698.

Submitted February 25, 1909. Decided June 24, 1909.

1. The payment of the so-called "elevation allowance" to dealers in hay, grain, and grain products at Nashville, Tenn., is an undue and unlawful discrimination.
2. Where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads, and further, to cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots.
3. Shipments of grain, grain products, and hay are carried from the Ohio and Mississippi River crossings and points north and west thereof to Nashville at local rates, and quantities of these articles are afterwards reshipped and rebilled from Nashville to points in the Southeast at the local rate, but the difference between the sum of the locals thus collected and the through rate from crossing point to ultimate destination is refunded to the shipper through the claims department of the railroad company. There is no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Nashville is named, and upon delivery of grain to that point it loses its identity and is in every respect a local shipment: Held, That the circumstances and conditions prevailing at Nashville are not so dissimilar from those prevailing at other points in the Southeast as to warrant a continuance of this privilege at Nashville without undue discrimination, to the prejudice and disadvantage of points in that territory not having a similar privilege; Held further, That this privilege operates as a device by which traffic may move at less than the lawful tariff rate.

Wimbish, Watkins & Ellis for complainants.

S. F. Andrews for Nashville, Chattanooga & St. Louis Railway Company; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and B. C. Duncan, receivers

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thereof; Atlanta & West Point Railroad Company; Western Railway of Alabama, and the South Railway Company.

Perkins Baxter for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

Luke Lea for Nashville Grain Exchange and Nashville Board of Trade, of Nashville, Tenn., Interveners.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner:*

This complaint is brought by a large number of commercial houses located at Atlanta and other Georgia cities who allege that the carriers have granted to Nashville, Tenn., through the adjustment of rates, rules, and regulations, undue preference and advantage in the handling of grain, grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, and thereby unjustly discriminate against complainants, and others similarly situated, in that Nashville is able to deliver grain and grain products in southeastern territory under such unduly preferential rates and privileges that cities within that territory can not enter into competition.

The practices of the carriers complained of are:

(a) The payment by the railway companies of elevation charges at Nashville.

(b) The application of the any-quantity rate on grain and grain products from Ohio and Mississippi River crossings and Nashville, and points related thereto, to southeastern destinations.

(c) What is known as the rebilling or reshipping privilege at Nashville, with its incidents.

The Nashville Grain Exchange and the Nashville Board of Trade have intervened in this case in support of the retention at Nashville of these privileges.

ELEVATOR ALLOWANCE.

In connection with the reshipping of grain at Nashville, there is an allowance of three-fourths of a cent per 100 pounds by the railroad companies in payment for so-called elevation. The record shows that the practice at Nashville is to pay this allowance not only for elevation, but in effect for unloading the grain in such manner as may be most convenient for the dealer. The latter is paid this allowance for grain unloaded or sacked at his store or warehouse, irrespective of whether there is any elevation involved or whether the sacking is done by hand or by machinery, when the shipment moves out of Nashville.

193 The present adjustment of defendants' rates from Ohio and Mississippi River crossings to points of ultimate destination in the Southeast is made up of a combination of the through rate from the crossings to a jobbing point, such as Atlanta, plus the local from

Atlanta. To certain circumscribed territory a dealer at the Georgia jobbing point can purchase a car of grain at a crossing point, bring it to Atlanta and ship it on to his customer at the same through rate as would be applied to a similar shipment by a dealer at a crossing point, or at Nashville. This equality in cost, however, relates only to the transportation charges, and is also restricted to a comparatively limited number of points. It would be impracticable for an Atlanta dealer to send a car through even to these points without stopping it at Atlanta for the purpose of inspection, sacking, etc., and it is partly in connection with certain incidental charges that he is placed at a disadvantage with a crossing point or Nashville. The Atlanta dealer does not receive any elevation allowance as does the Nashville dealer, and in addition, after unloading the car at his own expense, is required to pay certain switching charges.

Elevation allowances such as are paid at Nashville have been considered by the commission on several occasions and we have found that there was no way of controlling the evils and irregularities necessarily accompanying such allowances, and for that reason they have been condemned. Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. Rep., 90; Traffic Bureau Merchants' Exchange v. C., B. & Q. R. R. Co., 14 I. C. C. Rep., 317. It does not appear that the practice as carried on at Nashville is different in any essential particular from that which we held to be illegal in the cases just referred to, and it can not be doubted that it constitutes an unlawful discrimination against the complainants, who are compelled to perform a similar service at their own expense. An order will therefore be issued prohibiting the carriers from further paying this so-called elevator allowance.

ANY-QUANTITY RATE.

It appears from the record that throughout the country generally a different rate is applied on carloads from that applied on less than carloads in the transportation of traffic of the character involved in this complaint. There is an exception to this in what is known as southern classification territory, where the any-quantity rate prevails. Even in this territory a differential is in effect in Mississippi and Tennessee and parts of Alabama, and in Georgia on the Western & Atlantic Railroad north of Atlanta. However, the carriers contend that these exceptions are due to competitive conditions.

Complainants request the commission to order a differential as to carloads and less than carloads on this traffic to southeastern
194 territory, on the ground that the carload shipper is overcharged because he gets less service than and pays the same money as the man who ships in less-than-carload lots; and that this violates the primary object sought to be obtained by the interstate-commerce act; that is, equality of treatment to all shippers. This feature of the complaint is not directed against Nashville alone, but is of broader scope, and includes all movements of grain through Ohio and Mississippi River crossings to points in southeastern territory.

At the hearing considerable testimony was taken to prove that the handling of traffic in less-than-carload lots was more expensive to the carrier than handling it in carloads. Defendants admit the general truth of this proposition. However, while the commission will take notice of this fact it must also be borne in mind that the comparative cost of services to carriers can not be made the sole basis of rate making. Planters' Compress Company *v.* C. C. C. & St. L. Ry. Co., 11 I. C. C. Rep., 382, 405; I. C. C. *v.* C. G. W. Ry. Co., 141 Fed. Rep., 1003, and cases there cited.

The matter of establishing this differential has been agitated for a long time throughout southeastern territory. The carriers at one time favorably considered putting it into effect, and did actually do so for a short period, but it was discontinued for the reason that the State commissions in several of the Southern States require the maintenance of the any-quantity rate, and therefore it was impracticable to continue a differential between carload and less-than-carload shipments of interstate traffic. The sole contention of the carriers with respect to this feature of the complaint is its impracticability, and in this connection an illustration was given to show that the adoption of a differential on interstate traffic would result in increasing the rate on such shipments in less than carloads without a corresponding increase on intrastate less-than-carload shipments as long as the State commissions require the any-quantity rate on intrastate shipments. The differential would thus discontinue the uniform application of rates to both interstate and intrastate shipments. Less-than-carload shipments from point to point in a State would continue to move on the same rates as carloads. When a State line was crossed and the increased rate applied on the less-than-carload shipments, there would be an increase on such shipments sufficient to absolutely confine each State's business within its own borders and thus the interstate jobber would be eliminated in favor of the intrastate jobber.

There are, however, other and graver considerations with respect to this matter which exercise a compelling force upon the commission. It is true the commission has held that differentiation by the carriers of carloads from less than carloads in the application
195 of rates may be warranted under certain conditions. Here, however, we are asked to enter an affirmative order establishing a differential. What would be the effect upon all the business interests involved in this traffic should the commission take such action? No doubt its effect upon the jobbers at southeastern points would be beneficial; traffic would move into the Southeast in such manner as to give the longest possible haul in carloads to the local dealers, who, securing these long hauls at carload rates, would be the beneficiaries. Other classes who would be affected by the change would be the small dealers and consumers, and it appears that the necessary operation of such a change would be to cut off these classes from purchasing in small quantities at Nashville and Ohio River points and compel them to deal with jobbers in their immediate vicinity, who would purchase

in large enough quantities to secure the benefits of the lower rates on the long carload haul from the Ohio River and Nashville.

The entire record points to the fact that a differential on this traffic would have the effect of enhancing the price of these products to the consumer. The position taken by the railroads is that they have no objection to the establishment of a differential if a practical way can be found of accomplishing it, and provided the differential is brought about by an advance in the less-than-carload rates. It further appears that heretofore when this matter was agitated certain of the defendants considered it advisable to leave it to the commission to say whether or not there should be a differential, always upon the assumption that this would be effected by an increase of the less-than-carload rates rather than by reductions of carload rates. Yet the carriers at that time admitted that they could not undertake to advance the less-than-carload rates primarily because such action would create the anomaly in the application of interstate and intrastate rates to which we have already alluded.

The record shows that consumers are now able to buy, and do buy, as cheaply in Nashville and at the river crossings as can the dealers in Atlanta; that the establishment of this differential would concentrate business at southeastern points; and it might reasonably be concluded from this that through the changes which this differential would bring about there would frequently be interposed between the consumer and his supply the profit of one or more middlemen, unless the retailer or consumer continued to buy at the larger markets, in which case he would frequently be compelled to pay the higher rate to be applied under the proposed adjustment on less-than-carload shipments.

From the facts appearing, it is clear that if a differential on this traffic is ordered, an effort will be made to maintain the present rates upon carload shipments, and a higher rate will be made
196 to apply on less-than-carload shipments. In the event such a readjustment should be upheld the cost to the retailer and consumer would necessarily be increased.

The any-quantity rate is paid indiscriminately by all shippers in this section, and therefore there can be no valid claim of unjust discrimination between localities, nor do we understand that complainants make any such allegation. On the other hand, it is nowhere stated that the any-quantity rate is per se unreasonable. All that complainants are contending for is a differential, whether the result be an advance or a reduction of the present rates. Complainants assert that they have an inherent right to the jobbing business throughout the territory adjacent, or, as they say, "naturally tributary," to them. As one witness stated it, "the territory contiguous to Augusta belongs to Augusta, and Augusta ought to have it, and I don't think Savannah, Macon, Atlanta, or Nashville has any right to it."

A railroad can not be compelled, as prayed in this case, or even permitted to adopt a system of rate making which enables a large dealer

to drive a smaller dealer out of the market. We must have some other motive upon which to act in a matter of this kind than that the trade of a particular community is a vested right belonging to any particular class in that community. We are not permitted so to narrow our view of all the interests involved as to look only to the interests of a particular class in the community, and this for the sole purpose of vesting in that class what they claim to be their inherent rights, more especially when the enjoyment thereof is to be at the expense of the community at large.

The effect of an order prescribing a differential on less-than-carload quantities would be to place a tax on retailers and consumers in order that jobbers in this southeastern territory might realize a profit in competition with Nashville jobbers. If it were merely a question of adjusting the equities between the jobbers of Nashville and complainants, this matter would be greatly simplified, but our duty requires that we consider every interest which might be affected by our order, and where it seems that action on our part would have a tendency to adversely affect the interests of the section as a whole, we are not justified in granting the relief prayed for by a comparatively small class, as in the case before us.

REBILLING OR RESHIPPING.

Under the rebilling or reshipping privilege accorded at Nashville on shipments of grain, grain products, and hay from Ohio and Mississippi River crossings to points in the Southeast the through rates from the crossings to ultimate destinations are applied. Shipments of grain from the crossings move into Nashville, where they are
197 unloaded, elevated, or sacked, and at any time within six months they are reshipped on to points in the Southeast. The net freight charge for the entire movement is based on the through rate from the crossings to final destination. A shipment moving from Evansville to Atlanta via Nashville pays the local 10-cent rate to Nashville, and the local rate of 17 cents, Nashville to Atlanta, or a total of 27 cents. As the through rate from Evansville to Atlanta is 24 cents, the 3 cents representing the difference between such through rate and the combination based on Nashville is paid back to the shipper through the claims department of the railroad company. When the shipper desires to reship at Nashville he takes the expense bill, covering the inbound movement, to the agent of the carrier, and the outbound shipments are charged against that expense bill; he thereupon gets a bill of lading showing the origin of the property at Evansville. This is the practice followed by the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis employs a substantially similar practice, the net result of which is to apply the through rate via Nashville from the river crossings to final destination.

It is claimed by defendants that reshipping at Nashville was inaugurated many years ago for the purpose of protecting the revenues of the Louisville & Nashville Railroad, the Nashville & Northwestern,

and the Nashville, Chattanooga & St. Louis Railway, against the competition of boats on the Cumberland River; that the location of Nashville on the Cumberland River, a navigable stream, was sufficient to establish not only a basis of rates from the Ohio and Mississippi River crossings to Nashville and southeastern territory, but also to establish the custom of reshipping at Nashville; that the original route to the Southeast consisted of boats on the Cumberland River to Nashville and the Nashville, Chattanooga & St. Louis Railway from there on. It therefore became necessary, in order to protect the revenues of the rail carriers, to either establish very low rates from Ohio River crossings to Nashville proper, or to establish reshipping arrangements at Nashville to southeastern points. By taking the latter course there was accomplished the double purpose of securing the movement of traffic destined to the Southeast in competition with boats on the Cumberland River, and of protecting the revenues of the rail lines on traffic destined to Nashville proper.

The record shows that less than 1,000,000 bushels of grain were transported from Ohio and Mississippi River crossings via boat to Nashville at rates ranging from 7 to 9 cents per hundred pounds during the past season, but it was asserted that if a rate of 10 cents per hundred pounds were maintained by the rail carriers from the Ohio River to Nashville there would spring up sufficient boat tonnage to handle the entire grain traffic from the Ohio River into
198 Nashville, destined to southeastern territory. Of course, this grain handled into Nashville by boat does not have the benefit of the reshipping privilege.

The complaint is that this practice of reshipping constitutes an illegal preference in favor of dealers in hay, grain, and grain products at Nashville, and against such dealers in the Southeast; and furthermore that reshipping is a device by which less than the lawful rate is paid.

Atlanta dealers are at a disadvantage when it comes to engaging in business with such points as Griffin and Newnan, Ga. The through rate from Louisville to Griffin is 29 cents per 100 pounds, while the rate to Atlanta plus the rate to Griffin is 32 cents per 100 pounds, so that if the Atlanta dealer wishes to keep the grain over in Atlanta for the purpose of inspection, weighing, sacking, etc., he is at a disadvantage of 3 cents per 100 pounds. Griffin is 43 miles south of or beyond Atlanta. The defendants claim that in cases where this cheaper rate is applicable the points that get the benefit of it have been made junction or common points by either the State railway commission or the Interstate Commerce Commission. It is not seriously urged by complainants that this adjustment is unduly preferential to these junction points or that it arose out of any other cause than advantages of location. We do not deem it necessary to enter upon any further discussion of this phase of the case.

Witnesses for complainants refer to a privilege given to shippers at Nashville of granting them ten days' free storage, and it was asserted that if grain was moved out within ten days no charge was

made for storage. The defendants deny that they permit any such arrangement with shippers at Nashville, and assert that they require the discharge of cars at Nashville just the same as they do at Atlanta and other points.

The defendants assert that Nashville does not compete with Atlanta and similar points, but being a primary grain market, competes with similar markets, such as Cairo, Evansville, and Louisville. There is much difference of opinion as to what constitutes a primary grain market.

It is maintained by defendants that there is a difference between the circumstances and conditions surrounding this traffic at Nashville and at Atlanta and other southeastern points; that since the early days of railroads Nashville has been the gateway through which this traffic has moved into the Southeast, and her location on the Cumberland River contributed to the establishment of this gateway; moreover, that Nashville is located adjacent to a grain-growing section.

It was also contended by defendants that the practice of reshipping, as carried on at Nashville, prevails to a great extent
199 throughout the country in connection with the transportation of grain through so-called primary grain markets. Defendants' witnesses, however, were unable to give a single instance where the conditions are the same as at Nashville with respect to the practice of reshipping or rebilling. It is true the cities located at the river crossings are able to avail themselves of the privilage of elevating grain and subsequently reshipping it on to destination points in the Southeast without any increase in the transportation charge from the point of origin to point of destination. This is not due, however, to any privilege of reshipping or rebilling granted to these points, but is possible by reason of the fact that rates from points of origin to points of destination are made up of a combination based on the river. One witness did state with regard to the movement of grain into the Southeast from a certain section of Illinois that the carriers shrink the rate south of Louisville 2 cents in order to equalize the rates upon similar movements through Cairo. We shall, however, confine ourselves to a discussion of the practices and privileges at Nashville and complained of in this case.

It is contended by defendants that rebilling or reshipping is on the same basis as milling in transit and similar privileges. There is no complaint before us in this case against milling in transit, but it appears from the record that the privilege of milling in transit is accorded uniformly throughout the southeastern territory and is in no sense applied to Nashville or any other particular point alone.

We are not convinced that the circumstances and conditions under which the reshipping privilege is accorded at Nashville are so dissimilar from those obtaining at the other points involved in this traffic as to justify giving it our sanction on that ground. However, there are other aspects independent of this which lead us to regard this privilege with disfavor.

Illustrating the second feature of the complaint as to the alleged illegality of this privilege, the following example is given: A Nashville dealer buys 2 cars of grain, 1 at Memphis and 1 at Louisville. He pays, up to Nashville on a Memphis car, 11 cents per 100 pounds and on the Louisville car 10 cents. Should this Memphis car burn after being put in the warehouse, or be sold at Nashville, he would have two expense bills and one car of grain. Should he sell a car at Atlanta, the Nashville merchant would naturally use the Memphis bill which shows a payment of 11 cents, paying the balance of the through rate from Memphis to Atlanta of 9 cents. He has, therefore, shipped the Louisville car to Atlanta for a total of 19 cents, when the through rate from Louisville to Atlanta is 24 cents and the combination of locals 27 cents. It is further alleged that as considerable grain is consumed in Nashville there is always a surplus of expense bills which may be manipulated in order to secure a cheaper
200 rate than that provided in the tariffs. In answer to this defendants say that the operation of the reshipping privilege, as described in this example, is limited by the fact that the Memphis car of grain is worth more to the dealer at Nashville than the Louisville car, by reason of the difference in the freight rate, and, therefore, Memphis grain is not sold at Nashville proper, but is all reshipped to the Southeast. It is to be noted that the tariffs of the carriers contain a rule which prohibits trading in expense bills, and it is hardly probable that such a rule would appear if the manipulation of expense bills is impossible, as contended by defendants.

While this manipulation of expense bills may not be practiced to the extent apprehended by complainants, we may remark that prohibitions of law are not invariably directed against illegal acts because they may be numerous; a statute may be considered equally necessary by the legislature to prevent sporadic or isolated acts in contravention of public policy. A practice or privilege which permits the movement of a single shipment at less than the rate lawfully applicable to such movement is one which the commission has, under the law, no alternative but to condemn.

In considering a practice at Kansas City similar to the one under consideration (Alleged Unlawful Rates and Practices, 7 I. C. C. Rep., 240), it was found that the practice of handling grain in connection with this privilege was manifestly open to many abuses. On several occasions the commission has considered practices of a more or less similar nature and has uniformly regarded them with disfavor. In the case above referred to the finding was based upon the fact that the movement upon which the through rate was applied was in no essential sense a through movement, and we find the same to be true with respect to rebilling or reshipping at Nashville. The grain upon its arrival at Nashville loses its identity, and in every respect may be regarded as a local shipment. There is hardly a single incident of a through shipment involved in the transaction—the bill of lading is local, the rate is local, and there is nothing upon paper connected with the transaction indicating that the grain is to

be carried beyond Nashville. If it is the intention to carry it beyond, there is no present idea as to the point of destination.

We are of the opinion that the reshipping or rebilling privilege and the application of rates thereunder obtaining at Nashville is an illegal device by means of which grain, grain products, and hay may be transported at less than the tariff rate applicable thereto; and further, that it gives to Nashville undue and illegal preference and advantage and subjects other points in the Southeast to unjust and unreasonable prejudice and disadvantage. An order will be entered in accordance with the views herein expressed.

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EXHIBIT B.

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W. S. DUNCAN & COMPANY ET AL.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. } No. 1698.

Submitted January 10, 1911. Decided June 9, 1911.

1. In the original report and order in this case, 16 I. C. C. Reps., 590, it was found, among other things, that the reshipping or rebilling privilege permitted in the tariffs of defendants on grain, grain products, and hay at Nashville, Tenn., was unlawful, and accorded to that city undue and unreasonable preference and advantage and subjected complainant cities to undue and unreasonable prejudice and disadvantage, and the carriers were ordered to cease and desist from further permitting such transit or reshipping privilege. The order was suspended pending an investigation by the commission, upon its own initiative, of the evils attendant upon transit privileges generally. When the report in that case was made in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, and the privilege as it had obtained theretofore at Nashville was modified in accordance with the report, a further hearing was granted in this case to ascertain whether or not the existence of the privilege at Nashville, while denied at all other points south of the Ohio River and east of the Mississippi, constituted an unreasonable preference or advantage and undue and unreasonable prejudice and disadvantage in violation of section 3 of the act to regulate commerce.
2. After further hearing and oral argument on this particular issue: Held, That the matters and things complained of herein constitute a violation of section 3 of the act to regulate commerce.

William A. Wimbish for complainants.

Perkins Baxter for Louisville & Nashville Railroad Company.

R. Walton Moore and S. F. Andrews for Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railroad Company; Seaboard Air Line Railway (S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof); Atlanta & West Point Railroad Company; Western Railway of Alabama; and Southern Railway Company.

Luke Lea and Pitts & McConnico for Nashville Grain Exchange and Nashville Board of Trade, interveners.

203 SUPPLEMENTAL REPORT OF THE COMMISSION.

CLEMENTS, *Chairman:*

The complaint, filed in this case by the commercial interests of Atlanta and other Georgia cities, hereinafter referred to as complainant cities, is that defendants, through the adjustment of rates of transportation, rules, and practices, grant to dealers at Nashville, Tenn., undue preference and advantage in the handling of grain, grain products, and hay moving from the Ohio and Mississippi River crossings and from points north and west thereof, through Nashville to southeastern destinations. It is alleged that the result of these practices is that Nashville is able to deliver grain and grain products and hay in southeastern territory under such unduly preferential rates and privileges that dealers in complainant cities can not profitably participate in the business in competition with dealers located at Nashville.

One of the alleged discriminatory privileges complained of is the allowance at Nashville by the defendants reaching that city of three-quarters of a cent per 100 pounds in payment of so-called elevation. In its original report in this case, 16 I. C. C. Rep., 590, the commission, following its action with regard to elevation allowances at other places, condemned the practice. The commission has, however, in order to prevent discrimination between dealers at different places, held it order in abeyance, awaiting the decision of the courts with respect to a similar allowance condemned in another case.

The petitioners further sought to have the commission order in a lower basis of rates for this traffic in carload than in less-than-carload shipments. It was found that the carriers had for many years maintained rates on grain and grain products and hay in this territory applicable uniformly upon an any-quantity basis, and in its report, supra, the commission refrained from interfering therewith, as it appeared to operate uniformly for all shippers, large or small, and for the traffic here involved was not unjustly discriminatory or unlawful.

The final prayer of the petition related to the practice of rebilling or reshipping, which is permitted on grain, grain products, and hay at Nashville, but which is not accorded at any other point in southeastern territory. Under this privilege grain moving through Nashville may be unloaded and held not longer than six months and then reshipped at the through rate from origin to destination instead of at the sum of the rates into and out of Nashville. This practice was described at length in the commission's report, wherein it was condemned, and an order entered requiring defendants to cease and desist from granting this privilege to dealers at Nashville. The order, however, was suspended pending an investigation by the commission on its own motion, as to the extent and nature of
204 transit and reshipping practices and the methods followed therein, as well as the results thereof. The general matter was therefore set down for hearing in various parts of the country, and

an inquiry was made by the commission into the practices obtaining in various localities and upon many different commodities.

The purpose of the investigation was to ascertain whether these privileges and practices were attended with inherent and unavoidable opportunities for defeating the lawfully established rates, or whether they could be permitted to exist under such administrative regulation as would wholly or approximately obviate the evils attendant thereon. In its report in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, the commission prescribed the establishment and observance of certain rules policing the privileges and practices in such manner as to prevent the defeat of published rates at transit points established by the carriers where they were to be continued, in order that the practices and privileges might be permitted to continue if possible without the abuses incident thereto. The commission did not upon this general inquiry condemn rebilling or reshipping as such, but held that the responsibility for safeguarding and policing them, to the end that the lawfully published rate should be collected, rested upon the carriers. Carriers generally, guided by the commission's conclusions in this matter, have filed new rules and regulations in conformity therewith. It appears that the practices at Nashville have been thus corrected, and cut off altogether on movements through the Memphis crossing to Nashville as the possibilities of defeating the published rates in connection with that movement, to which attention was called in our former report in this case, could be obviated in no other way.

The results of the commission's inquiry and the action following on the part of the carriers made it advisable to vacate the order originally entered in this case in so far as it required defendants to absolutely cease and desist from granting the privilege of rebilling and reshipping to dealers at Nashville, as set out in our former report in this case, and the commission therefore proposed to consider a modification of its order in such manner as to merely prevent the discrimination between Nashville and other places, leaving it to the carriers to accomplish this by either granting the privilege at complainant cities or by denying it to all. A citation was issued and served requiring defendants to show cause why the order theretofore entered should not be changed and modified so as to require the defendants to cease and desist from giving any undue or unreasonable preference or advantage in any respect whatever in favor of Nashville, or from subjecting Atlanta and other complaining cities, with respect to transit or reshipping privileges upon grain, grain
205 products, and hay, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

A hearing was had upon this citation or rule, additional briefs have been filed in the case, and it has been further orally argued. The defendants have amplified the evidence upon certain points with regard to the dissimilarity of circumstances and conditions affecting the transportation of the traffic involved to and from Nashville, destined to points farther to the southeast, as compared with those

affecting the transportation of like traffic into and out of Atlanta and the other complaining cities. It is argued that the disadvantages complained of, if any, are not undue or unreasonable or in violation of the act to regulate commerce. This matter was quite thoroughly treated in the original record of the case, and it was at that time carefully weighed and considered by the commission in reaching the conclusion announced in its opinion, supra. It seems advisable, however, under the circumstances, to briefly reconsider this phase of the question in view of the importance which now attaches particularly thereto.

It is claimed on behalf of the city of Nashville that it is a "primary grain market," and it is averred that this entitles that city to the privilege of reshipping grain in manner and effect, as stated in our previous report herein, and that complainant cities are not markets of this character and hence are not entitled to such privilege. While the record is not clear as to what is meant by the use of the expression referred to, it is said that a primary grain market is one where surplus grain is gathered from adjacent producing points and held for the demands of commerce, and that this is true of Nashville. No statistics have been offered showing the relative amount of grain coming from the Ohio River and beyond into Nashville, or the amount of local grain brought to Nashville; but it is certain that the evidence does not show a surplus of local production. It does not appear that reshipping was accorded to Nashville on the hypothesis that it was a concentration point for local grain. The privilege was particularly intended to take care of the through movement from the Northwest. Grain from the region south and east of the Ohio and Mississippi Rivers and not moving from the crossings by rail is not entitled to reshipping privileges at Nashville whether brought in by river or by rail. The record throws little light upon the relation of Nashville to the local production of grain in years gone by, and whether or not it was at one period of its history a concentration point for the grain produced in that section, and therefore a primary grain market in that respect must necessarily have very little to do with the issues here involved, because the privileges complained of do not apply on anything but grain from the crossings by rail, and because if Nashville was ever a primary grain market in the sense indicated it
206 was at a time before these transit privileges had been established and when the movement of grain from the Northwest to the Southeast was quite limited.

Some of the characteristics given in the affidavits, filed on behalf of Nashville, of points at which the reshipping privilege is found are: Where there is a wholesale supply market from which distribution can be had in various directions to other markets in touch with it or in the same general territory; where the geographical position of the city is such that it has the facilities for water or railroad transportation and railroad competition among carriers with respect to where the commodity is produced and where it is consumed, and where there is proximity to the final market. It is said that the

existence of an interior concentration point or milling point and terminal markets enables the producer to have available competitive markets for his commodities and enables the consumer to have a steady reliable market in competition with other markets from which to draw his supply. It is pointed out that the extension of these transit privileges, permitting a commodity to be stopped at an interior concentration or milling point where rates do not break and then permitting it to be reshipped from that point on the basis of a through rate from origin to destination, undoubtedly tends to equalize and distribute the industries of the country and prevents congestion by the location of all these industries at terminal or rate-breaking points. These affidavits aver that there are hundreds of points throughout the United States that possess the qualifications above described and which have been accorded these privileges.

It is further claimed for Nashville that she is advantageously situated for the distribution of grain, and is therefore also a distributing market. It is in effect urged by defendants and the representatives of Nashville interveners that it has all the attributes of a primary grain market and also of a distributive market, and that in these particulars no other city south of the Ohio or east of the Mississippi is similarly situated.

It is also urged that Nashville is located at precisely the proper distance between points of origin and destination so that grain may be stopped off from its journey and elevated, and thus prevented from spoiling, and that cities located somewhat to the north of Nashville are reached too soon for this purpose, while any point south of Nashville could not be reached until the grain would be liable to damage. There is some conflict, however, as to this matter, and Atlanta's representatives have reminded us of the salubrity and wholesomeness of her atmosphere and her elevation above Nashville.

It is a recognized fact that the existence of the Cumberland River has produced conditions which have been reflected in freight rates and adjustments thereof to Nashville, but it is important to
207 inquire just what effect the river has upon the traffic here involved. In meeting the river competition on this grain traffic from the Northwest, the carriers have not reduced the rates to Nashville in competition with the river, but they have left that city to the enjoyment of what traffic could be moved to that point at river rates of transportation for local consumption. At the same time, by the adoption of the reshipping privilege at Nashville, commercial preference and advantage have been accorded the interests there engaged in supplying the immense territory to the Southeast with its increasing consuming power. In other words, the present adjustment promotes both the local and the through grain business and adroitly keeps the line of cleavage between them clear and distinct. The grain moving into Nashville locally, via the river and otherwise, can hardly compete with the through business to the Southeast under the present tariffs, and grain moving into and out of Nashville under the transit privilege can not very well compete with the local industry. This

twofold adjustment leaves little more that could be done to put Nashville on an advantageous basis as compared with all rivals in that territory.

In respect to this river competition it is important to note that it has not in fact reduced the rate to Nashville, nor the rate from the crossings to the Southeast, nor the rate from Nashville to the Southeast. The reshipping plan seems to have pretty well destroyed this river competition without reducing materially these charges. The evidence is to the effect that reshipping was adopted to secure to the railroads a portion of the business. As to this immensely valuable through business from the Northwest to the Southeast, it has absorbed practically all. In fact, under present conditions, with the cost of transshipment from rail to river and from river to rail, this water competition is greatly nullified. Furthermore, there seems to be nothing connected with this pivilege in its actual practice in this country which makes it dependent upon location upon navigable waters. In fact, but an insignificant portion of the total number of points where it is practiced are so located, and many cities north and west of the Ohio and Mississippi Rivers enjoy the privilege either as primary or distributive markets irrespective of location upon navigable waters or of other competitive conditions.

Considering particularly the traffic involved in this case, namely, the transportation of grain, grain products, and hay from the grain-growing region lying to the north and west, to the consumers of the Atlantic States of the Southeast, there are many characteristics of similarity between Nashville and complainant cities which are obvious and predominating. They are all located in a section which consumes a portion of the excess production of grain and its products produced in a more or less distant part of the country. This
208 condition of affairs naturally invites those with capital and business inclination to participate in the enterprise of supplying this demand. Both Nashville and the complainant cities are close to the consumers, and the testimony is that they are in strong competition for even the smallest trade of the retailers and consumers. Nashville is, of course, peculiarly benefited by the exclusive use in this territory of this reshipping privilege in connection with the further practice of the carriers of charging the same rate whether the shipment is a carload or a single barrel of flour or bale of hay. The testimony is that the distant makets at the river crossings confine themselves to the larger wholesale trade of the Southeast, and, therefore, there is not the same character of competition between the crossing points and the southeastern cities as exists between the cities in the Southeast themselves.

In the rapid growth and development of the South in recent years the volume of consumption has increased proportionately and the competition for business is strong and persistent. It appears of record that complainant cities are laboring under great disadvantage in competition with Nashville, while the business thrives and prospers at Nashville, and whatever other causes may contribute

toward producing this result, the fact remains that Nashville does have these various privileges contained in the tariffs of defendants, and that she is the only city in the Southeast enjoying them.

At the hearing it was strongly urged that the commission should not disturb the existing arrangements because grain dealers at Nashville have invested large sums in facilities for handling the business located upon the lines of defendants and, therefore, discontinuance of transit privileges at Nashville would work an enormous destruction of values amounting to confiscation.

The carriers assert that they did not voluntarily establish the privilege of reshipping at Nashville, but that it was forced upon them by conditions over which they had no control. It is not infrequent in our investigations of matters dealing with discrimination to find the carriers whose tariffs have contained rates or practices in violation of the principles of relative justice defending their action as being a necessary result of the logic of a situation from which they would have been glad to escape had any means of escape been open to them.

The principle of milling-in-transit is quite similar to that of reshipping, namely, the application of the through rate to an intercepted movement. In fact we are told in this record by interveners' affidavits that—

"transit privileges now generally accorded had its inception years ago in the milling-in-transit of grain, which had for its purpose the placing of mills on a direct line of haul, origin of the grain to destination of the product, on a parity, by protecting the through rate, point of origin to ultimate destination."

209 We observe from the record that the reason advanced for originally permitting milling in transit at Nashville was to keep Nashville mills running the year round. It is not claimed that milling in transit was forced upon the carriers in the same sense that reshipping was, yet the carriers have now extended milling in transit without preferring one point to another.

The commission recognizes its duty to carefully consider the results of its orders upon established business conditions, and has not failed to carefully consider the effect of an order in this case. The carriers indicated at the hearing that the effect of an order declaring the privileges accorded to Nashville as amounting to unjust discrimination and undue preference and disadvantage against complainant cities would result in taking out the privileges at Nashville, rather than extending them to complainants. Under such an order it would, of course, be within the election of the defendants to obviate the discrimination in either manner. We think, however, that the objections advanced by them for not extending the privilege are not as serious as they apprehend. The privilege, of course, could be surrounded by any lawful limitations and regulations prescribed by the carriers so long as their application was uniform to all parties in interest. For instance, it would not be necessary to permit the privilege at more than one point on the same grain, and then only in a forward

direction. And as to defendants' objection to the trouble and expense of policing the privilege elsewhere than at Nashville, manifestly it is a discrimination undue in nature to provide for these things at one place and refuse on the ground of trouble or expense to do likewise at a competing point.

Admitting, however, that the carriers should find it necessary for their purposes to take out the privilege at Nashville, we feel that the benefits to be derived by all parties and interests concerned by a due observance of the statute would in and of itself justify the action; and, further, that the results on the business at Nashville would not be as dire and chaotic as is represented by the defendants.

While admitting much that is said in favor of Nashville and appreciating the zeal and persistency with which her natural advantages of location have been presented for our attention, we find that in the light of comparison with the other cities in the Southeast Nashville is not so dissimilarly situated with respect to this particular traffic as to entitle it to be singled out and exclusively granted the important and extremely valuable privileges denied to its competitors. It seems to us remarkable and unusual that the carriers, in their tariffs, should have preferred one of these points to another in the handling of this profitable business. That their tariffs are con-
210 trary to the provisions of the statute we have no doubt, as we do not find anywhere in the record a substantiation of the existence of such conditions of dissimilarity at Nashville as would justify giving the sanction of the commission to an adjustment which accords these very valuable privileges to one city of the Southeast and denies them to every other city south of the Ohio River and east of the Mississippi.

After a careful consideration of all the pertinent facts and circumstances, we are of the opinion and find that the matters and things complained of herein constitute the undue and unreasonable preference and advantage and the undue and unreasonable prejudice and disadvantage, as between the parties to this proceeding, prohibited by section 3 of the act to regulate commerce, and an order will be issued accordingly.

211 *Order.*

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of June, A. D. 1911.

Present:

Judson C. Clements,
Charles A. Prouty,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

W. S. Duncan & Company; A. P. Morgan Grain Company; J. D. Frazier & Company; Adams-Whitney Company; A. L. & M. W. Fain; J. J. & J. E. Maddox; Charles E. Caverly; R. W. Davis, of R. W. Davis & Company; A. C. Woolley & Company; McCord-Stewart Company; Rogers & Harwell; F. W. Keeley Company; Deaton Grocery Company; Dan Joseph Company; G. Y. Banks & Company; The Macon Grocery Company; A. B. Small & Company; Adams Brothers Company; Merritts & Company; F. W. Hazelhurst Company; Adams & Johnston; Soloman & McRae; R. T. Birdsey & Company; George A. McArthur; Parker-Willis Company; Cordele Grocery Company; Albany Grocery Company; Tift & Peed Grocery Company; A. S. Pendleton Company; Dalton Grocery Company; Marion Curry; Orr-Smith Grocery Company; Brandon & Dyer; Gallaher Grocery Company; Simpson Grocery Company; J. R. Ragan; J. M. Bradshaw & Company; George F. Chidsey and Carey T. King; Talmadge Brothers; Webb & Crawford; G. H. Hulme; and Epps-Wilkins Company. No. 1698.

v.

The Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Louisville & Nashville Railroad Company; Atlanta, Birmingham & Atlantic Railroad; Southern Railway Company;
212 The Cincinnati, New Orleans & Texas Pacific Railway; Alabama Great Southern Railroad; Georgia Southern & Florida Railway; Illinois Central Railroad Company; Central of Georgia Railway Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; and the Western Railway of Alabama, defendants. The Nashville Grain Exchange and Nashville Board of Trade, interveners.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the commission having found in said report that the granting to dealers at Nashville, in the State of Tennessee, the privilege of rebilling or reshipping grain, grain products, and hay from Nashville, whereby grain moving through Nashville may be unloaded and held not longer than six months and then shipped on at the through rate from origin to final

destination instead of at the sum of the rates into and out of Nashville, which rebilling or reshipping privilege has been more particularly described in the report made and filed in this case, while denying said privilege to dealers in Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, is unlawful and gives undue and unreasonable preference and advantage to Nashville and to the dealers in grain, grain products, and hay located at Nashville, and subjects Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, and the dealers in grain, grain products, and hay located at said cities, to undue and unreasonable prejudice and disadvantage:

It is ordered, That the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911, and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities.

213 In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervening respondent; W. S. DUNCAN & COMPANY ET AL., intervening respondents. } No. 47.

Motion to dismiss in behalf of W. S. Duncan & Company et al.

Filed October 7, 1911.

Now come W. S. Duncan & Company and other intervening respondents representing the complainants in the proceeding before the Interstate Commerce Commission in which was issued the order complained of in the above-entitled cause, and move to dismiss the original and amended petitions filed herein by the above-named petitioners, on the following grounds, to wit:

214 I.

Because there is no equity in said petition.

II.

Because said petition fails to state any cause of action entitling the petitioners to any relief.

III.

Because whether a discrimination is unjust is a pure question of fact, the determination of which with respect to the practices of common carriers engaged in interstate commerce, is by law committed exclusively to the Interstate Commerce Commission, whose opinion with respect thereto and decision thereof forecloses judicial investigation.

IV.

Because in determining that the practices of rebilling as permitted at Nashville constituted an unjust discrimination as against Atlanta and other Georgia cities, the Interstate Commerce Commission proceeded in the exercise of administrative power that had been lawfully conferred upon it by appropriate action of Congress; and its action in this regard is not open to review in the courts on the question of fact involved.

V.

Because whether the circumstances and conditions at Nashville are so substantially dissimilar to those existing at Atlanta and
215 other Georgia cities as to justify the preference accorded to Nashville in the matter of rebilling, is a question of fact committed by law exclusively to the determination of the Interstate Commerce Commission.

VI.

Because the courts are without power to invade the administrative functions vested in the Interstate Commerce Commission; and cannot set aside an order duly made by it, even though the court upon similar consideration may arrive at a different conclusion; judicial inquiry being limited to the power of the commission to make the order, and not the expediency or wisdom of having made it.

VII.

Because it appears on the face of the petition that the petitioners and other interested parties were accorded a full hearing by the Interstate Commerce Commission in the proceeding complained of; and that in arriving at its conclusions and in making its order therein, the said commission proceeded regularly and fairly within the scope of the authority conferred upon it by law.

VIII.

Because there are no allegations of fact in the petition showing or tending to show, that in making the order complained of the said commission exceeded the power lawfully conferred upon it, or acted in any respect irregularly, arbitrarily or fraudulently.

IX.

Because the exercise by the Interstate Commerce Commission
216 of administrative power in determining that the rebilling privileges condemned constituted an undue preference or an unjust discrimination constitutes due process of law, and does not offend the fifth amendment to the Constitution of the United States or any other constitutional guarantee or right of property.

X.

Because even should the enforcement of the order complained of operate to cause a loss in the revenues of the petitioners by reason of a lack of ability to otherwise profitably compete for the traffic with the boats in the Cumberland River or with other carriers from Ohio River crossings, such loss would be merely incidental to the removal of an unlawful discrimination, and would not be the equivalent of confiscation; nor would it contravene any other constitutional guarantee or property right.

XI.

Because in prohibiting undue preferences and unjust discriminations by common carriers engaged in interstate commerce Congress proceeded in the exercise of the power of regulation conferred upon it under the commerce clause of the Constitution; and the orders of an administrative board acting under general legislation of Congress in the execution of this power constitutes due process of law, notwithstanding that obedience to the order may result in financial loss to the carriers affected; for that in removing an unjust discrimination the power of regulation and not that of eminent domain, is invoked and exercised.

217 XII.

Because it appears on the face of said petition as amended, and the exhibits thereto, that an actual discrimination exists against Atlanta and the other Georgia cities named, and an actual preference is accorded Nashville with respect to the privilege of rebilling or reshipping; and the Interstate Commerce Commission having found such discrimination to be unjust, judicial inquiry with respect thereto is foreclosed.

XIII.

Because it appears that the parties defendant to said proceeding before the commission, and against whom the order complained of is directed, include not only the petitioners, but also the following carriers, to wit, Southern Railway Company; Atlanta Coast Line Railroad Company; Atlanta, Birmingham & Atlantic Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia, Southern & Florida Railway Company; Illinois Central Railroad Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway Company; Atlanta & West Point Railroad Company; and Western Railway of Alabama.

Wherefore these respondents submit that inasmuch as the order complained of is directed to and runs against all of said railway companies jointly, all of them are necessary parties to any suit to enjoin or set aside the order.

218

XIV.

Because it appears on the face of the record that the railway companies against whom the order is directed can extend the privilege of rebilling or reshipping, as indulged at Nashville, to Atlanta and the other Georgia cities named.

Wherefore, Those intervening respondents pray that the relief prayed for in said petitions be denied, and the said petitions be dismissed at the cost of the petitioners.

WIMBISH & ELLIS,
Solicitors for Intervening Respondents,
525 Grant Building, Atlanta, Ga.

WILLIAM A. WIMBISH, *of Counsel.*

219 *Notice of application for temporary injunction in No. 46.*

Filed October 10, 1911.

In the United States Commerce Court.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENTS. | No. 46.

Notice is hereby given to the original and intervening respondents in the above-entitled suit, that on Monday, October 16th, 1911, application will be made by the petitioners therein to the Commerce Court, then to be in session in the city of Washington, D. C., for an injunction to temporarily stay and suspend the operation of the

order of the Interstate Commerce Commission, which is made the subject of this proceeding, for such time as the court may think proper, pending a hearing of the case upon the merits.

PITTS & MCCONNICO,
Counsel for Petitioners.

Service of this notice is hereby accepted this 10th day of October, 1911.

CHAS W. NEEDHAM,
For the Interstate Commerce Commission.
BLACKBURN ESTERLINE,
For the United States of America.
For W. S. DUNCAN & CO. ET AL.,
Intervening Respondents.

220 *Notice of application for temporary injunction in No. 47.*

Filed October 10, 1911.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENTS. } No. 47.

Notice is hereby given to the original and intervening respondents in the the above-entitled suit, that on Monday, October 16th, 1911, application will be made by the petitioners therein to the Commerce Court, then to be in session in the city of Washington, D. C., for an injunction to temporarily stay and suspend the operation of the order of the Interstate Commerce Commission, which is made the subject of this proceeding, for such time as the court may think proper, pending a hearing of the case upon the merits.

R. WALTON MOORE,
ALBERT S. BRANDEIS,
Counsel for Petitioners.

Service of this notice is hereby accepted this 10th day of October, 1911.

CHAS W. NEEDHAM,
For the Interstate Commerce Commission.
BLACKBURN ESTERLINE,
For the United States of America.
WIMBISH & ELLIS,
For W. S. DUNCAN & CO. ET AL.,
Intervening Respondents.

221 In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY and Nashville, Chattanooga & St. Louis Railway, petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission and W. S. Duncan & Company et al., intervening respondents.	In equity. No. 47.

Replication of the petitioners in the above-entitled cause to the answer therein of the United States of America.

Filed October 17, 1911.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception, which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the said answer of the said respondent, United States of America, for replication thereunto say that they do and will aver, maintain, and prove their said petition to be true, certain, and sufficient in the law to be answered unto by the said respondent, and that the answer of the said respondent is very uncertain, evasive, and insufficient in law to be replied unto by these repliants without that, that any other matter or thing in its said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

R. WALTON MOORE,
M. P. CALLAWAY,
ALBERT S. BRANDEIS,
W. G. DEARING,
Solicitors for Petitioners.

222 In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY and Nashville, Chattanooga & St. Louis Railway, petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission and W. S. Duncan & Company et al., intervening respondents.	In equity. No. 47.

Replication of the petitioners in the above-entitled cause to the answer therein of Interstate Commerce Commission, intervening respondent.

Filed October 17, 1911.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception, which may be had or taken to the

manifold errors, uncertainties, and insufficiencies of the said answer of the said intervening respondent, Interstate Commerce Commission, for replication thereunto say that they do and will aver, maintain, and prove their said petition to be true, certain, and sufficient in the law to be answered unto by the said intervening respondent, and that the answer of the said intervening respondent is very uncertain, evasive, and insufficient in law to be replied unto by these repliants without that, that any other matter or thing in its said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

R. WALTON MOORE,
M. P. CALLAWAY,
ALBERT S. BRANDEIS,
W. G. DEARING,
Solicitors for Petitioners.

223 *Journal entry.*

Proceedings of October 18, 1911.

THE NASHVILLE GRAIN EXCHANGE ET AL., PETITIONERS,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 46.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION et al., intervening respondents. } No. 47.

(Cases not consolidated but heard together.) Petitioners were allowed to file record before the Interstate Commerce Commission in No. 47, subject to objections on the part of the United States. Said causes came on for hearing on the motion of the United States to dismiss in No. 46 and on petition for a preliminary injunction in No. 47, and the arguments of counsel were commenced, Mr. K. T. McConnico appearing on behalf of the petitioners in No. 46, Mr. Albert S. Brandeis on behalf of the petitioners in No. 47, and Mr. Blackburn Esterline on behalf of the United States.

224 *Journal entry.*

Proceedings of October 19, 1911.

THE NASHVILLE GRAIN EXCHANGE ET AL., PETITIONERS,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 46.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT: INTERSTATE COMMERCE COMMISSION et al., intervening respondents.	No. 47.

Said causes came on for further hearing upon the motion of the United States to dismiss in No. 46 and on petition for preliminary injunction in No. 47, and the arguments of counsel were concluded: Mr. Blackburn Esterline appearing on behalf of the United States, Mr. William A. Wimbish on behalf of W. S. Duncan & Company et al., intervening shippers: Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, and Mr. R. Walton Moore on behalf of the petitioners in No. 47. Thereupon said causes were taken under advisement by the court.

225 *Journal entry.*

Proceedings of October 23, 1911.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., PETITIONERS, *vs.* UNITED STATES OF AMERICA, RESPONDENT: INTERSTATE COMMERCE COMMISSION and W. S. Duncan & Co. et al., intervening respondents.	No. 47.

The following order was granted in open court on the 18th day of October, 1911, and is entered of record this 23d day of October, 1911:

This day, this cause came on to be heard on the motion of the petitioners for a preliminary injunction: and thereupon counsel for the petitioners in open court offered in evidence in support of the said motion certified copies of the stenographer's notes in the case of W. S. Duncan and others against Nashville, Chattanooga & St. Louis Railway, No. 1698, Interstate Commerce Commission, and certain exhibits accompanying the same: and thereupon counsel for the United States in open court objected to the same, in accordance with the written objections made and then filed in said cause. Upon consideration whereof, it is this 18th day of October, 1911, ordered, That the said written objections of the United States be entered as a part of the record in this cause, and that the said certified copies of the stenographer's notes and the said exhibits be received in evidence on the hearing of the motion for a preliminary injunction, subject to the said objections.

226 *Opinion on motion for temporary injunction and motions to dismiss.*

Filed October 24, 1911.

United States Commerce Court.

October session, 1911.

THE NASHVILLE GRAIN EXCHANGE AND THE NASHVILLE Board of Trade, petitioners. *v.* UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, intervener.	No. 46.
LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHville, Chattanooga and St. Louis Railway, petitioners. *v.* UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission and W. S. Duncan & Company et al., interveners.	No. 47.

ON MOTION FOR TEMPORARY INJUNCTION ON THE PART OF PETITIONERS, AND ON MOTIONS TO DISMISS BY RESPONDENT AND INTERVENERS.

Mr. K. T. McConnico, with whom Mr. Lee Douglas was on the brief, Mr. R. Walton Moore, and Mr. Albert S. Brandeis, for the petitioners.

227 Mr. Blackburn Esterline, special assistant to the Attorney General, with whom Mr. James A. Fowler, assistant to the Attorney General, was on the brief, for the United States.

Mr. Charles W. Needham for the Interstate Commerce Commission.

Mr. William A. Wimbish for the intervening shippers.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

[October 24, 1911.]

CARLAND, *Judge:*

The above cases are before the court on motion of the petitioners in each case for a temporary injunction, and on the joint motion of the United States and the Interstate Commerce Commission to dismiss the petition in case No. 46, and on motion of W. S. Duncan and Company et al. to dismiss the petition in case No. 47.

The joint motion of the United States and the Interstate Commerce Commission to dismiss the petition in case No. 46 is based upon the alleged want of capacity in the petitioners therein to maintain an original petition in this court for the purpose of setting aside the order of the Interstate Commerce Commission of which complaint is made. As counsel for petitioners in case No. 46 have requested that if in the opinion of the court there should be doubt as to the right

of said petitioners to maintain said petition, then that said
228 petitioners be granted leave to have said petition treated as a petition in intervention in support of the petition filed in case No. 47, we do not deem it necessary to pass upon the motion to dismiss, but under and by virtue of the power conferred upon courts of the United States by section 921, R. S. U. S., will consolidate said cases Nos. 46 and 47 and order that the petition in case No. 46 stand as a complaint in intervention in support of the petition filed in case No. 47.

It is insisted, however, by counsel for the United States and the Interstate Commerce Commission that the petitioners in case No. 46 have no such interest in the controversy as entitles them to intervene in case No. 47. We think this contention can not be sustained. The last proviso of section 5 of the act creating this court provides as follows:

"Provided further, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the terms of this act or the acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof."

The Nashville Grain Exchange is a corporation organized under the laws of Tennessee and is an association of the grain dealers
229 of the city of Nashville in said State, including in its membership practically all of the dealers in grain, grain products, and hay in said city. The Nashville Board of Trade is a corporation organized under the laws of Tennessee and is the leading commercial organization of the city of Nashville, representing in an organized way the bulk of the substantial business interests of said city.

Language could not very well be made broader than the terms of the statute. It not only permits communities, associations, corporations, firms, and individuals who are interested in the controversy to intervene, but such communities, associations, corporations, firms, and individuals, if interested in the question before the commission or in any suit which may be brought by anyone under the provisions of the act creating this court, may intervene in any suit or proceeding at any time after the institution thereof. While there may be room for argument as to the character of the interest which such communities, associations, corporations, firms, and individuals should have in the controversy in any suit in this court, there certainly can be no question but that the petitioners in case No. 46 are interested in the question to be decided in case No. 47. It has sometimes been held that parties who were merely interested in the question to be decided in a lawsuit were not interested within the terms of a statute which provided that parties in interest might intervene, but Congress,
230 in the language of the law above quoted, was careful to make the law broad enough to include not only those who might be directly interested in the controversy, but those who were interested in the question to be decided.

The mandatory part of the order of the Interstate Commerce Commission sought to be annulled in these proceedings is as follows:

"It is ordered, that the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911 (postponed by the commission to November 1st, 1911), and for a period of at least two years thereafter abstain from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville, the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities."

It is shown by the petitions and affidavits in these cases that the enforcement of this order will result in the destruction of the existing business of grain dealers at Nashville, and said grain dealers are members of the Nashville Grain Exchange and the Nashville Board of Trade.

231 So far as the motion for the temporary injunction is concerned, we are of opinion that the same should be granted in case No. 47. Section 3 of the act creating this court provides as follows:

"That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order, pending the final hearing and determination of the suit."

The word "discretion" used in the law, of course, means a legal discretion, a discretion controlled and limited by sound principles of law applied to the facts in each particular case. The principles which govern courts of equity in granting temporary injunctions are well known to the profession and need not be stated here. One of those principles, however, may be stated as follows: Where the case in which the temporary writ of injunction is asked presents questions of grave importance and difficulty, and it appears from the pleadings and affidavits presented upon the hearing for the temporary writ that great damage will result to the complainant if the writ is not

232 granted, and he shall finally be successful in the litigation, and on the other hand, that the granting of the writ will not cause serious damage to the defendant as compared with the damage which would result to the complainant if the same were not granted, a court of equity will unhesitatingly, in order to maintain the present status, issue a temporary writ of injunction.

In this case the pleadings and affidavits satisfy the court that the petitioners will be greatly damaged if the temporary writ is not granted, and they shall finally be successful in the litigation. On the

other hand, we are satisfied that, in comparison with the damage which would thus be suffered by the petitioners, the damage which will result to the respondent and interveners if the temporary writ is granted and they shall be successful in the litigation will be small. We fully appreciate the grave and responsible duty imposed upon this court by law in reference to the granting of injunctions restraining or suspending the orders of the Interstate Commerce Commission, and such cases will always be approached and considered with the care and consideration which such duty imposes. In view of the principles which should guide all courts of equity in granting temporary writs of injunction, and in view of the great responsibility above mentioned, we think the pleading and affidavits presented to us on this hearing present a clear case for the granting of an order
233 suspending the enforcement of the order complained of until the further order of the court.

In regard to the motion to dismiss made by W. S. Duncan and Company et al., in case No. 47, it appears that the motion strikes at the foundation of the case. A consideration thereof will be deferred, therefore, until the case is heard upon the merits.

234 *Order consolidating Nos. 46 and 47 and granting temporary injunction.*

Entered October 24, 1911.

United States Commerce Court.

October session, 1911.

The Nashville Grain Exchange and The Nashville Board of Trade, petitioners, v. United States of America, respondent, and Interstate Commerce Commission, intervenor.	No. 46.
Louisville and Nashville Railroad Company and Nashville, Chattanooga and St. Louis Railway, petitioners, v. United States of America, respondent, and Interstate Commerce Commission and W. S. Duncan and Company et al., intervenors.	No. 47.

ORDER.

The above cases came on to be heard before the court at a regular session thereof, held on the 19th day of October, 1911, at Washington, D. C., upon the motions of the petitioners in each case for a temporary injunction, the joint motion to dismiss of the United States and the Interstate Commerce Commission, in case No. 46, and the motion to dismiss of W. S. Duncan and Company et al., in case No. 47; and

The court having examined the pleadings, affidavits, and exhibits presented on said hearing, and having given them due
235 consideration, as well as the arguments and briefs of counsel:

Now, on this 25th day of October, 1911, under and by virtue of the power conferred by section 921, Revised Statutes of the United States, orders and adjudges that said cases be, and they are hereby, consolidated for the purposes of trial.

And it is further ordered and adjudged, pursuant to request of counsel for petitioners in case No. 46, that the original petition filed therein be, and the same is hereby, allowed to stand and to be hereafter treated as a complaint in intervention in support of the petition in case No. 47.

It is further ordered and adjudged that the order of the Interstate Commerce Commission, dated June 9th, 1911, the mandatory part of which said order is in the following language:

"It is ordered, that the above named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911 (postponed by the commission to November 1st, 1911), and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville, the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities."

be, and the same is hereby, suspended and enjoined until the further order of this court.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

IN THE UNITED STATES COMMERCE COURT LOUISVILLE & Nashville Railroad Company, and Nashville, Chattanooga & St. Louis Railway, petitioners.	
236 *vs.*	No. 47.
UNITED STATES OF AMERICA, RESPONDENT; THE INTERstate Commerce Commission, intervening respondents; W. S. Duncan & Company, et al., intervening respondents.	In equity.

Answer of W. S. Duncan & Company, et al., Intervening Respondents.

Filed November 24, 1911.

The court having deferred consideration of the motion to dismiss the petition as amended, until the hearing of the case on the merits:

Now come W. S. Duncan & Company and other intervening respondents, complainants in the proceeding before the Interstate Commerce Commission, without waiving their said motion to dismiss, but wholly relying thereon, and by way of answer to the petition as

amended herein filed, or to so much thereof as they are advised that is material for them to make answer, answering say:

I.

These respondents, relying upon the grounds of their said motion to dismiss, adopt the said grounds and each of them as a part of this answer as fully as if herein repeated and set out.

237 II.

Further answering these respondents say they admit the allegations of fact contained in paragraphs 1 and 2 of the original petition, excepting that they do not admit that compliance with the order of the Interstate Commerce Commission would necessarily subject the petitioners to a very heavy and serious loss; and they further say that if such should be the result, the incidental loss would be damnum absque injuria.

III.

These respondents admit that the recitation in paragraph 3 of the petition of the history and conduct of the proceedings before the Interstate Commerce Commission in the case of W. S. Duncan & Company et al. vs. Nashville, Chattanooga & St. Louis Railway et al. is substantially correct, excepting that these respondents say that it is shown on the face of the report of the commission that the purpose of the complaint was as much to remove the unlawful discrimination resulting from rebilling and the allowance of elevation charges at Nashville, as it was to obtain a differential between carload and less-than-carload shipments of grain, grain products, and hay, and to that extent relieve the discrimination.

IV.

Answering paragraph 4 of the amended petition these respondents deny that each and every allegation therein contained was established by the uncontradicted evidence taken before and heard by the commission; they deny that there were no facts before the commission, or in existence, revealing anything to the slightest degree in consistent with or contradictory of any of the allegations and averments of said paragraph 4.

They deny that the uncontradicted evidence before the com-
238 mission established that Nashville is exactly similarly circumstanced as are Ohio and Mississippi River crossings with respects to the moving, marketing, handling, and shipping of grain, grain products, and hay to the Southeast; or that said river crossings have the reshipping practice exactly the same in form, practice, substance, principle and effect as Nashville; or that such rebilling privilege as permitted at Nashville is either practiced or required at the river crossings, with possibly minor and insignificant exceptions; or that the practice of rebilling at Nashville is maintained because of the compelling force of water competition, and not voluntarily by the carriers; or that large quantities of grain actually do move into Nash-

ville from Ohio and Mississippi River crossings by boats on the Cumberland River for shipment into Southeastern territory; or that neither the shippers in the Georgia cities or the public would be benefited by a discontinuance of rebilling at Nashville.

And these respondents say that there was no evidence submitted to the commission, nor any facts called to its attention, of such irresistible force, and so exclusive of all other facts and circumstances as would justify the court in saying, as a matter of law, that the commission in arriving at its opinion and reporting its conclusion and requirement in the premises, acted so arbitrarily and in such disregard of right and justice as manifests an abuse of discretion, or other excess of power.

Respondents further say that it appears on the face of the reports of the commission that all of the alleged facts and contentions set out in the petition now presented to the court were submitted to and were fairly considered by the commission in arriving at its opinion and conclusion.

V.

While it may be true, as alleged in paragraph 5, of the petition, that the petitioners alone cannot establish and extend the rebilling
239 privilege to the Georgia cities not reached by their rails, these respondents say that it is entirely practical and feasible for the carriers, against whom the order complained of is directed, to extend this practice to those points. These carriers, or some of them, other than the petitioners, were and are parties to the tariffs under which rebilling is permitted at Nashville, and aid in maintaining said practice by accepting proportionals of Ohio River rates to southeastern destinations, and by accepting arbitrary proportionals on shipments to Carolina territory. The privilege, as indulged at Nashville could not be maintained without the concurrence of these carriers. By a like concurrence the privilege could be extended to the Georgia cities. Respondents therefore submit that the carriers against whom the order runs can either discontinue the privilege at Nashville or extend it to the cities named in the order of the commission.

VI.

Respondents admit that in the proceedings before the commission it was shown the Cumberland River is navigable to Nashville for a portion of the year, and that some boats ply the river; but they deny that such boats compete with the rail lines for the transportation of grain, grain products, and hay from Cairo, Evansville, St. Louis, and other western markets to Nashville; and they say that the evidence before the commission showed that the transportation of grain by boat to Nashville was largely confined to corn grown along the banks of the Cumberland River and a small amount of grain grown in the Wabash Valley; and there is no regular or appreciable movement of grain by water from the river crossings to Nashville and none destined for reshipment into Southeastern territory. The evidence before the commission showed that if the boats on the Cumberland

River ever competed with the rail lines for this traffic such competition has long since disappeared, and is no longer a factor to be considered, both because of the superior service offered by the rail
240 lines and because the combined cost of elevating, loading, protecting, transporting, unloading, and transferring the grain to and from the boats to elevators and cars would doubtless exceed the rail rates.

Respondents deny that it was shown that the Cumberland River is capable of transporting all of the grain, grain products, and hay coming into Nashville for local consumption and beyond; on the contrary it appeared that for several months in the year the Cumberland River was not navigable for such craft as ply the Ohio and Mississippi Rivers, and hence a regular and steady movement throughout the year could not be maintained so as to meet the demand of the market both for buying and for selling; and it further appeared that bulk grain does not move economically and safely by water.

VII.

These respondents deny the allegations contained in paragraphs 7 and 8 of the petition to the effect that the river competition is controlling and compels the maintenance of the rebilling practice at Nashville; and they deny that the enforcement of the order of the commission would deprive the petitioners of any of their legal rights or deny to them the protection of the fifth amendment to the Federal Constitution.

VIII.

Answering paragraph 9 of the petition, these respondents admit that it was shown that some grain has moved into Nashville by boats in the Cumberland River; but they say that this was local grain, largely corn, not destined to southeastern points beyond Nashville. They deny that the withdrawal of the privileges at Nashville would divert to the boats any considerable volume of the traffic destined for points beyond Nashville, under the circumstances and conditions as they now exist; and they deny that the discontinuance of this transit privilege at Nashville would necessarily affect the rates on other traffic from and to Nashville.

241 IX.

It is true that if rebilling be discontinued at Nashville, the lines leading from the Ohio River crossings would compete for the traffic into the Southeast, and the advantage now enjoyed by the petitioners and the dealers at Nashville would be removed; but it is denied that such competition, even if effective, would deprive the petitioners of any legal right, and it is denied that such competition would be of no benefit to the Georgia cities.

X.

The respondents deny the allegations of paragraph 11 of the petition.

XI.

These respondents admit that an enormous tonnage of grain, grain products, and hay is rebilled at Nashville for shipment into the Southeast, and that the petitioners derive therefrom an annual revenue of many hundred thousand dollars; and respondents say that this fact manifests the advantage and preference enjoyed by Nashville under the device of rebilling, not only over all other southeastern cities, but over Ohio and Mississippi River crossings as well.

XII.

These respondents are advised that paragraph 13 of the petition sets out mere conclusions of the pleader and presents no issue of fact material to be answered.

XIII.

Answering paragraph 14, these respondents say that any loss that might accrue to the petitioners as a result of compliance with the order of the commission would be merely incidental and affords no ground for setting the said order aside.

242 XIV.

It being undisputed that Nashville enjoys an actual preference, and that an actual discrimination exists as against Atlanta and other Georgia cities, and the Interstate Commerce Commission having found and declared such preference to be undue, and such discrimination unjust, these respondents submit that this court will not review the proceedings before the commission for the purpose of determining whether this question was rightly decided; nor will it consider original evidence relating thereto.

Respondents say that, in arriving at its opinion that the discrimination is unjust, the Interstate Commerce Commission is not confined to or bound by the evidence submitted by the parties, whether or not such evidence is contradicted. Whether the preference accorded Nashville is undue and the discrimination against Atlanta and other cities is unjust is a matter involving the public interest and not one of private right, in the consideration and determination of which said commission may and should consult all available sources of pertinent information and apply the expert knowledge gained from its own experience. In such cases there neither is nor can be any record from a consideration of which the court can determine whether error was committed or, in light of which, the opinion of the commission can be limited, modified, changed, or reversed.

Wherefore, these intervening respondents having fully answered, pray that they may be hence discharged with their reasonable costs.

WILLIAM A. WIMBISH.
Counsel for said Intervening Respondents.

WIMBISH & ELLIS,
Solicitors, 525 Grant Building, Atlanta, Ga.

United States Commerce Court

No. 47.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Petitioners,

NASHVILLE GRAIN EXCHANGE,
NASHVILLE BOARD OF TRADE,
Intervening Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent,

INTERSTATE COMMERCE COMMISSION,
W. S. DUNCAN & COMPANY,
A. P. MORGAN GRAIN COMPANY,
J. D. FRAZIER & COMPANY,
M. L. & M. W. FAIN,
R. W. DAVIS & COMPANY,
A. C. WOOLEY & COMPANY,
MCCORD-STEWART COMPANY,
Intervening Respondents.

Testimony Before Judge Mack
at Washington D. C. November 27, 28, 29, 1911.

[Filed February 1, 1912.]

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IN THE

UNITED STATES COMMERCE COURT

HEARING BEFORE MACK, J., OF THE UNITED STATES COMMERCE COURT, NOVEMBER 27, 28, AND 29, 1911.

No. 47.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent;*

INTERSTATE COMMERCE COMMISSION, ET AL., *Intervenors.*

[Filed February 1, 1912.]

Mr. Albert S. Brandeis for the Louisville & Nashville Railroad Company;
Mr. M. P. Callaway for the Nashville, Chattanooga & St. Louis Railway;
Mr. K. T. McConnico and Mr. Lee Douglas for the Nashville Board of Trade and intervening petitioners;
Mr. William A. Wimbish for W. S. Duncan & Co.;
Mr. Winfred T. Denison, Mr. Blackburn Esterline for the United States;
Mr. Charles W. Needham for the Interstate Commerce Commission.

(Monday morning, November 27, 1911.)

JUDGE MACK: How long is this going to take, gentlemen?

MR. BRANDEIS: I should think two full days. Doubtless our side will occupy that much time.

JUDGE MACK: Let us proceed.

MR. ESTERLINE: I suppose your Honor will take the appearances first?

JUDGE MACK: Yes.

(The appearances were given to the reporter as set forth on page one of this transcript.)

JUDGE MACK: Did we consolidate these two cases?

MR. BRANDEIS: Yes.

JUDGE MACK: We allowed the one to stand as an intervening case? What was the exact order?

MR. MCCONNICO: No. 46 stands in intervention, in support of 47.

JUDGE MACK: 47 is the railroad's case; yes. Have you a copy of that opinion?

(MR. MCCONNICO hands copy to Judge Mack.)

MR. MCCONNICO: May it please the court, on behalf of the petitioners in No. 47 and the intervening petitioners, as they are now regarded, the Nashville Grain Exchange and the Nashville Board of Trade, we first desire to offer in evidence the following certified copies of the original complaint filed in the case of W. S. Duncan & Co., *et al.*, against the Nashville, Chattanooga & St. Louis Ry. Co., *et al.*, with the Interstate Commerce Commission, the same being case No. 1698 on the Commission's docket. We also offer certified copies of the answer filed with the Commission to that complaint by the defendants and certified copies of the orders of the Commission in that case, permitting the Nashville Board of Trade and the Nashville Grain Exchange to intervene in the controversy before the Commission. We also offer in evidence certified copies of all the orders of the Commission made in that cause, and the two re-

ports of the Commission made in that cause. We also offer in evidence a certified copy of all of the evidence taken before the Commission in that cause and inquiry. We have all that evidence here with a certificate from the Chairman of the Commission which recites that this evidence constitutes all the evidence taken before the Commission in said case, the original of which is now on file and of record in the office of said Commission. We also offer in evidence—

MR. NEEDHAM: That covers the record and the evidence. We want to raise an objection to that; perhaps it ought to be raised.

MR. MCCONNICO: There is only one other thing I want to offer, and that is a certified copy of the report of the Commission. In the matter of the substitution of tonnages at transit points, the same being No. 3002, inasmuch as that report is referred to in the last report of the Commission in the case at bar.

MR. ESTERLINE: Just a moment. (Confers.)

JUDGE MACK: What is your objection to the certified copy of the evidence?

MR. ESTERLINE: We object to the certified copy of the evidence, your Honor, on the grounds:

1. That there is no statute or other authority requiring and directing the Interstate Commerce Commission to employ a stenographer to take the said stenographic notes nor is there any statute or other authority making it the duty of the Interstate Commerce Commission to preserve the said stenographer's notes and the said exhibits as a public document or to preserve the same in record form; or to take and preserve in record form the evidence or any of it before the said Interstate Commerce Commission in said cause, or in any cause; and the said stenographer's notes and the said exhibits are inadmissible as a public record or document required to be made and kept by public officials or a public body according to law.

2. That the said stenographer's notes and the said exhibits are neither public reports nor public records nor public facts in the sense that they are reports or records or facts which the Interstate Commerce Commission has under the authority of law undertaken to ascertain and make public for the benefit of all persons who may be interested to know them, and the same are inadmissible as such.

3. That the said Interstate Commerce Commission is an investigating body and its report and order entered in the said cause of W. S. Duncan and others against Nashville, Chattanooga & St. Louis Railway and others, Docket No. 1698, Interstate Commerce Commission, was made according to law after it had investigated the matters complained of in such manner and by such means as it deemed proper; that the said stenographer's notes and the said exhibits are not admissible in evidence and should not be considered or reviewed by the court on the motion to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission for lack of power in that body to make the same.

4. That the said stenographer's notes and the said exhibits are not offered for the purpose of showing lack of power in the Interstate Commerce Commission to make the said order, but in offering the same the petitioners seek (a) to attack as crude and inexpedient the action of the Commission in the performance of the administrative functions vested in it by law; and (b) to have the court review the said stenographer's notes and the said exhibits and to reach a different conclusion and judgment and to substitute such different conclusion and judgment of the court for that of the Commission.

5. That the said stenographer's notes and the said exhibits do not purport to embrace all the matters and things which prompted the order of the Commission, but only embrace "all the evidence taken before the Commission in said cause," and this court may not review the said stenographer's notes and

the said exhibits, for the Commission is an administrative body appointed by law and informed by experience and is peculiarly competent to pass upon questions of fact; that a peculiar training and comprehensive knowledge of conditions, of environment, and of transportation relations is attributed to the Commission, in addition to which it has had the witnesses before it and has been able to judge of them and their manner of testifying.

6. That the order of the Interstate Commerce Commission was regularly made and is valid on its face and it is not competent for the petitioners to seek to show by a reference to the stenographer's notes and the exhibits that the Commission acted beyond the scope of its powers; and the respect due to a co-ordinate branch of the Government forbids the judiciary from inquiring in such a manner into the validity of an order thus made.

7. The stenographer's notes and the exhibits are otherwise irrelevant, incompetent, and immaterial.

JUDGE MACK: I overrule all the points except the fourth; if you will read that again I will hear the other side on that.

MR. ESTERLINE: 4. That the said stenographer's notes and the said exhibits are not offered for the purpose of showing lack of power in the Interstate Commerce Commission to make the said order, but in offering the same the petitioners seek (a) to attack as crude and inexpedient the action of the Commission in the performance of the administrative functions vested in it by law; and (b) to have the court review the said stenographer's notes and the said exhibits and to reach a different conclusion and judgment and to substitute such different conclusion and judgment of the court for that of the Commission.

MR. MCCONNICO: There is an allegation in the petitions, if your Honor please, that the order of the Commission in this case is the result of an erroneous conclusion of law, announced by the Commission

upon facts, that appeared to the Commission, determinative of the controversy, with reference to which there was no dispute, or offer to contradict the same, before the Commission. I understand under the decisions of this court and of the Supreme Court, that you may not ask a court to review any fair exercise of a discretionary power of the Commission, which it has exercised in the form of an order upon facts appearing to it with respect to which there is any conflict. I understand the previous decision of this court to be that where, in the facts made to appear in the record before the Commission, there is no conflict as to any determinative fact, that then the action of the Commission in announcing an erroneous conclusion of law on the undisputed facts is open to review by the court, because that as it has been held is "the essence of judicial power." We offer this certified transcript under a certificate from the Chairman of the Commission that it constitutes all of the evidence taken before the Commission in the case in question; and we offer that certified transcript as the very best evidence to establish the proposition that in this case the Interstate Commerce Commission, as the result of an erroneous conclusion of law upon determinative facts not in dispute, pronounced the order we attack.

JUDGE MACK: Is there any dispute between you as to facts?

MR. NEEDHAM: We can not say just what they propose to do. Now of course, as to some of the facts there is no dispute, that is true. That is one reason why the offer of this entire record, including photographs, as your Honor will see, making the record very voluminous, and their consideration in this court, or in case of appeal, seems to us entirely wrong, even on the theory which has just been announced. On this theory, only that part of the record should be admissible which would show the evidence which they claim was uncontradicted. If that is a proper ground for admitting it—Our objections

run mainly along this line, that this is not a court of review; can not take this record up to review it. Now the other thing, as to whether or not the Commission has acted arbitrarily or has misconstrued the law applicable to a given set of facts, if admissible on that ground, it is only that part of it on that particular issue.

JUDGE MACK: I ruled out the testimony in the Lemon case, but unfortunately did not state the grounds at that time; but the ground was that it was useless to encumber the record in that case with all the testimony in the other case, to prove the Commission acted beyond its power. If so, whatever is answered to show that in the other hearing can be offered; and so here, if some specific point for which this testimony is offered, that can be shown without the entire testimony being offered, I see no reason for encumbering this record with the entire testimony. If you want to prove that the entire matter was undisputed before the Commission, that the facts were all one way, it seems to me it should be easy to ascertain that fact and stipulate it without encumbering the record in the matter. In that case there were several issues raised that are not involved in this case. For instance, the elevator charges and the practise with reference to elevator charges, with reference to switching, and several issues were raised there that are not raised in this case. Then again, if they will indicate what points they claim, on which the evidence was undisputed, then we can answer whether or not the claim that there was evidence to the contrary on this point can be sustained.

MR. ESTERLINE: It would seem strange that the Interstate Commerce Commission spent three years taking those thousands of pages of testimony on something that was not denied. It is fair to assume that they were disputed.

MR. WIMBISH: I will speak for the intervener, having spoken in the hearing before the Commission. We deny that the uncontradicted evidence before the

Commission established the facts claimed by the petitioners in their petitions in this court. Of course there are many facts that are incapable of direct contradiction. To illustrate, the questions of the Cumberland River and various other facts. Those things in nature are not susceptible of dispute. But close examination in this case brought out a great many things inconsistent with them, with the positions assumed, and in contradiction of their statements. There was other evidence to some extent directly contradictory, and if not so, still the effect of which would be adverse to the facts drawn by the petitioners in this case. So the interveners do not admit that the uncontradicted evidence before the Commission was as set up in the petitions.

Mr. McConnico: May it please the court, that statement of counsel will illustrate the practical difficulty of our ever being able, preliminarily, to segregate this evidence, and to state to your Honor any part of it with respect to which it can be said that there was no conflict, and assume the responsibility ourselves of saying just what part of it will be determinative of the questions of law and fact in the case. May it please the court, we are in this attitude: There was a hearing before the Commission the beginning in this case in which there were three questions presented by the Complaint,—the validity of an elevation allowance at Nashville; the validity of an any quantity rate, and the validity of this reshipping practise. In support of the allegations of the complaint of the Georgia points at the first hearing before the Commission, witnesses were introduced. They were examined orally, their examination was by oral questions and answers. Parts of the testimony of each of those witnesses will apply to this reshipping practice at Nashville, and to alleged discriminations against the complaining Georgia points, resulting from this reshipping practice, so when you look at the hearing of the original complaint before the Commission, it

is impossible for us, and it is impracticable for us, to divide up the testimony of any given witness and to assume the responsibility of saying that we will insist this is the only material thing on the question of discrimination. And so when we come to the second hearing of the case that was had in response to an order of the Commission upon the petitioners and the intervening petitioners in the case at bar, to show cause why this reshipping at Nashville should not be enjoined as an undue discrimination against the complaining Georgia points or the shippers at those points. At that hearing witnesses were introduced and examined. It is fair to state that at that hearing there were no witnesses offered and no testimony produced on behalf of the complaining Georgia points; but may it please the court, the interveners here and the petitioners here before your Honor did there introduce oral testimony, confining that testimony to the issue of discrimination which was the only one left in the case. Now on that proof that was confined at that last hearing to the issue of discrimination, and on the proof that was before the Commission at the first hearing, which in part referred to the issue of discrimination, the order was put down in the case at bar by the Commission, condemning this reshipping practise at Nashville on the single ground that it was an undue discrimination. Now we say, may it please the court, that practically the only way we can prove—the very best way we can prove—the averment of our petition and of the interveners' petition in this case, to the effect that there appeared to the Commission without dispute, determinative facts on that issue of discrimination, which determinative facts (not made the subject of any dispute), and having applied to them well settled principles of law, demonstrate that the thing condemned by the Commission as an unlawful discrimination, as a matter of law from the undisputed facts is not and could not be such—is by offering in evidence here the entire transcript of the evidence

before the Commission at both these hearings. Now we say that necessarily the only way we can prove that, and the best way we can prove that, to your Honor, is for us not to assume in advance the duty of segregating the record or making the effort to segregate the testimony of witnesses, but to come before the Commerce Court with a certified copy of all the evidence under the certificate of the Chairman of the Commission, which states that the attached evidence was all the evidence taken before the Commission in this cause. That record or this transcript does contain things extraneous to the matter of the alleged discrimination; but the question of discrimination at this first hearing was interblended with the other questions that are not now in the case; and we find it, may it please the court, impractical to support the averments of the petitioners in this case, upon which we ask this court to assert jurisdiction, by any other means except to produce what the Commission itself certifies was all the evidence taken before the Commission.

JUDGE MACK: I will admit it, subject to your objections.

MR. ESTERLINE: Does your Honor understand we must reserve objections as we go along?

JUDGE MACK: I do not know of exceptions ever being reserved in equity suits.

MR. MCCONNICO: I undertook, if your Honor will indulge me for a moment, to recite in the beginning before your Honor the things that I offer in evidence. In order that I may not have overlooked anything, I desire to say that I understand myself to have offered in evidence the certified copy of all of the complaints and answers and orders and reports of the Commission in this case, and also a certified copy of all the evidence taken before the Commission.

MR. ESTERLINE: Mr. McConnico, may I see—Is the original complaint the one in the first case?

MR. MCCONNICO: There was no complaint with respect to the supplemental order. The Commission

made an order on us to show cause, and we filed answers to same.

MAJOR E. B. STAHLMAN.

(The first witness, Major E. B. Stahlman, was sworn by Judge Mack.)

MR. MCCONNICO: The name is E. B. Stahlman? And where do you reside, Major?

MAJOR STAHLMAN: Nashville, Tennessee.

Q. How long have you lived in Nashville?

A. Permanently since 1865. I was in Nashville quite a while, however, in 1863.

Q. And what is your present calling?

A. I am publishing a newspaper, and I own a bank and office building.

Q. Have you now any connection with, or interest in, any transportation company, either boat or rail, or in the grain or hay business?

A. None whatever; nor any other sort of transportation business.

Q. Were you, for a great many years, in the employ of the Louisville and Nashville Railroad Company?

A. Yes, sir.

Q. I will ask you to state briefly, but from the beginning, the different positions you held, from the beginning to the end of that service.

A. My first position was that of an ordinary laboring man, in the re-timbering of the tunnels that had been burned out during the civil war by a raid of General Morgan's. I presume about two months after that I was appointed a clerk of the work, which meant the re-timbering of the tunnel, the getting out of cord-wood for the use of the railroad,—the engines then were all wood burners,—getting out of cross ties and bridge timbers; employed about eleven hundred men. From that point in Sumner County, near the tunnel, I was sent to Bristow, Kentucky,

near Bowling Green, and given charge of a lot of men who were engaged in the same kind of work, getting out cross ties, timbers, and cord-wood. I retired from the service of the company at that point, and accepted a position in connection with a store in Bristow, Kentucky. After remaining with that firm —which also had the agency of the Louisville and Nashville Railroad, and the express agency as well— I was induced to go to Chattanooga, Tennessee, in the service of the Adams Express Company. I had charge of the general transfer business of the express company's entire traffic, which was then very large,—amounted to trainloads, two or three times a day, there being no facilities for getting supplies from the west to the south, which had been impoverished at the close of the war, and needed supplies of all kinds. From Chattanooga I was sent by the express company to Nashville.

MR. MCCONNICO: Can you give that year?

A. 1865. And I was appointed cashier of the Southern Express Company at Nashville. I held that position until 1868. In 1868 I was appointed what they call route agent; had charge of the local agencies on several of the railroad lines leading out of Nashville. In 1870—

Q. 1870?

A. 1870, I was asked to return to the service of the Louisville and Nashville Railroad, and was appointed contracting freight agent at Nashville for that company, my office being located on Market Street, only about half a block from Broad, and less than a block from the city wharf and the river. I held that position until 1874, when I was promoted to the general agency at Nashville, having charge not only of the contracting business, but the general business of the company. I held that position until 1878, when I was appointed general freight agent of the Louisville and Nashville Railroad. While I still held my residence in Nashville, my headquarters were Louisville, although

headquarters in that day and time did not amount to much; we were in the saddle. In 1879 I was made traffic manager of the Louisville and Nashville Railroad. In 1880, the latter part, I had a little misunderstanding with an official of the company, due in a measure to my irritability, and the breaking down of my health, for I was really in very bad health. I thought he wanted to perform the functions that had been delegated to me to perform,—the duties rather,—and he asked me to take a leave of absence for my health. I said I would not take a leave of absence, but retire permanently for my health, so I resigned absolutely, and returned to Nashville. While in Nashville I established and helped to erect what is known as the Union Stock Yards, a very successful enterprise, and really the first money I ever made, that I could say I had some to the good, was during that time I had worked for myself, instead of a corporation. However, in 1883 I was induced,—an old friend of mine who had obtained an interest in the Louisville, New Albany and Chicago Railroad,—the Monon,—to accept the vice presidency of that company, and I went to Louisville for that purpose. During that period we built and finished the railroad into Chicago and Indianapolis, and I enjoyed the satisfaction of seeing an old—a very old—road, considered of practically no value, made a road that ranked along with about the best of its rivals. I remained there until 1884, and was induced to return to Nashville. I accepted a position with the Louisville and Nashville Railroad, and for a while I had really no title, although when I accepted the position it was understood I would be elected one of the vice presidents of that company in a little while, and the October following I was elected a vice president of that company, with my headquarters in Nashville. I held that position for about six years, but a sort of tired feeling came over me, I was not doing any good financially for myself, and I concluded that I would get out, and I tendered my resignation. That was

in 1890—yes, 1890. There were several months before they accepted it. Finally they did, and I took a rest for several months,—went to Europe. Coming back, the railways of the South, and the steamship companies, wanted me to accept the position of general commissioner of the Southern Railway and Steamship Association, and they organized at that time what was probably the most far reaching association in the whole country,—including all the railroads of the South,—south of the Ohio River and east of the Mississippi River to Washington City. I was elected commissioner, and remained in that office for four years, being re-elected by unanimous vote, which was required, each time;—and I got tired again.

MR. MCCONNICO: Now, Major, I do not want to—

MAJOR STAHLMAN: I am sorry to have gone so elaborately—

MR. MCCONNICO: I do not want to burden the record, but I would like to have you state the nature of your duties as commissioner in that association, with a view of stating whether or not that brought you into intimate touch with and gave you intimate knowledge of the whole rate adjustment in this territory of the South.

A. It is proper to say from the time I was made contracting agent of the Louisville and Nashville Railroad, I became a student of matters in everything that might offer itself to me, and I began to investigate, and look into, and try to analyze, and reach conclusions, as to what should or should not be done respecting the traffic of railroads, particularly, that being my chosen field, and being the field in which I operated. When I was chosen as commissioner of the Southern Railway and Steamship Association, it covered the handling of the affairs of that association, covered all of the competitive rates between all junction points east of the Mississippi, south of the Ohio, clean through to Washington City, the States embodied in that territory, and as I said

before, every railroad of the southern section was a member of the association.

MR. MCCONNICO: Were you in that position when the first act to regulate commerce was passed?

A. No sir, I was vice president of the Louisville and Nashville Railroad at that time.

Q. Now, when did your official service with any railroad cease—or with any railroad affairs?

A. I declined a re-election to the Southern Railway and Steamship Association commissionership in July, 1895, but they did not succeed in choosing my successor until October, and I then retired, save to wind up the odds and ends of the association, and also a joint receivership that I had with ex-Governor Brown of the old Western and Atlantic Railway Company. I wound up my affairs with the association after six or eight months, about October, 1895, and the receivership of the Western and Atlantic Railway, Governor Brown having died, in about a year after that. You may say by the first day of January, 1897, I had closed all of my affairs with railroads and steamships of every kind, and my receivership, and from that good day—I call it good—up to the present hour I have had no connection with railroads, steamships, or any other corporation; in other words I have tried to atone for some of the sins—if they were sins—that I committed away back yonder, by publishing a newspaper and telling the people what they ought to do.

MR. MCCONNICO: Now Major, from the time you came to Nashville with the Express Company in 1865, and from the beginning of your service there as contracting agent of the Louisville and Nashville Railroad Company in 1870, as you have described; from that time on, state whether or not your information and knowledge of traffic conditions at Nashville with respect to both railroads and commerce on the Cumberland River, was intimate.

A. It was, even during my career as an express official, because we had connections with the boats,

receiving traffic from them, and as cashier it was my duty to make settlement with them.

MR. MCCONNICO: You were then on the ground at Nashville and in touch with the traffic situation by river and rail some years before the reshipping practice was put in operation by the railroad, in 1872?

A. Yes sir.

Q. Now before getting to that practice as it was inaugurated, I will ask you on what date, as a matter of history, the Nashville, Chattanooga and St. Louis Railway was constructed and completed between Nashville and Chattanooga.

MR. ESTERLINE: Objected to as incompetent, irrelevant and contrary to fact.

JUDGE MACK: You may answer.

A. In 1854.

MR. MCCONNICO: At that time, Major Stahlman, in 1854, were there any rail connections at all between Cincinnati, Louisville, Paducah, Cairo, or any of the Ohio or Mississippi crossing points, and the southeast territory?

A. None.

Q. Was the Nashville, Chattanooga and St. Louis Railroad running from Nashville to Chattanooga and its connections southward to the seaboard—to the south Atlantic seaboard—the only rail line and rail gate way into the southeast territory?

A. The one was all.

JUDGE MACK: Are not such allegations admitted in the answers?

MR. NEEDHAM: I have raised no objection to this, but as to the early history of the traffic and transportation conditions, we raise no question about that, your Honor.

MR. ESTERLINE: There is no question about it and we do not think it relevant.

JUDGE MACK: There is no question as to relevancy,

but as to fact; if not in question, it might be stated quickly and save our time.

MR. NEEDHAM: No question at all about it, your Honor, as to the early history of the transportation conditions.

MR. WIMBISH: There is no objection.

MR. ESTERLINE: I do not know how you will state it, but it is all true.

JUDGE MACK: Have you not stated it in your petition?

MR. MCCONNICO: In meagre outline, only, in the petitions; and it was somewhat amplified in affidavits that were filed on a preliminary hearing in this matter; and if counsel will stipulate and agree now that this reshipping practice—no, that the old situation at Nashville with respect to handling this grain and all western produce by water and rail, and the reasons that constrained the inauguration of the reshipping practise there, are true, as stated in the petitions and affidavits, it will wonderfully shorten the case.

MR. NEEDHAM: As to the reasons which brought about the reshipping privilege, that is what we are here to try; but as to the existence of rail lines, or non-existence of rail lines, the existence of the water line, and that up to certain periods there was nothing but water transportation, and the existence of water transportation at Nashville to-day,—those are facts that we do not deny. But what the reasons were, as he has stated there, that led to the adoption of the reshipping or rebilling privilege, that is a matter—

JUDGE MACK: That you do not admit then?

MR. MCCONNICO: There is not much of—

JUDGE MACK: I am trying to get at what you do admit.

MR. ESTERLINE: I do not know what we are asked to admit.

MR. MCCONNICO: That illustrates the practical difficulty. The reason the reshipping practice was granted and the situation at that time I will have to

show. I will endeavor to be brief, and will ask the witness to be brief.

JUDGE MACK: All right.

MR. ESTERLINE: Could we not make an objection to this testimony, and have it understood this testimony is given subject—

JUDGE MACK: What testimony?

MR. ESTERLINE: These early conditions.

JUDGE MACK: Oh yes, you can have objection to the entire question of early history, and I will overrule it.

MR. ESTERLINE: It goes in, subject to that objection?

JUDGE MACK: Yes.

MR. MCCONNICO: In 1854, with the Nashville, Chattanooga and St. Louis Railroad being the only rail line into the southeast, and Nashville, the only rail gateway into the southeast, I will ask you Major Stahlman to state how all western produce and grain for through shipment into southeast consuming territory was concentrated at Nashville, and to some extent, in a general way, state the quantity of that traffic that was there concentrated.

A. The people of the southeast were sufficiently interested in the construction of the Nashville and Chattanooga Railroad to aid it with their money,—the people of Augusta, including the Georgia Railroad and Banking Company, which owned the Georgia Railroad, and prominent men of the South, taking an active part in the construction of that railroad. The roads already having been built from the coast up to Atlanta, had been built by corporations, and from Atlanta to Chattanooga by the State of Georgia. The Nashville and Chattanooga Railroad gave a direct communication between the grain fields of the west, and the cotton producing sections of the South, and all of the surplus grain needed there above what the South itself produced, came cheaper from the grain fields of the West tributary to Nashville by Cumberland River than it could have

reached the South in any other way. In other words, the line from the South Atlantic seaboard through Atlanta, Chattanooga and Nashville, was the most direct communication and the shortest line that was feasible, and it is to this good day the most direct and shortest line. Nashville had the Cumberland River communicating with the Ohio and through the Ohio at Cairo with the Mississippi,—that was the grain producing section.

MR. MCCONNICO: How about the Wabash Valley?

A. That was connected with the Ohio and the Wabash Valley and southern Illinois and southern Indiana, that is, the Ohio, Mississippi Valleys, were the grain producing valleys, the Mississippi Valley, I mean above Cairo, the Mississippi River above Cairo, and that section and the products of that section were tributary to Nashville, and were brought to Nashville; and Nashville, by reason of its proximity and the facilities to get the products of the West to Nashville through the rivers, was the only distributing point of western produce for that entire southern section of country. And Nashville supplied practically all of the western produce to that southern section of country.

Q. There were no rail lines north or west of Nashville at all?

A. No sir.

Q. And all this grain from these grain producing valleys moved to Nashville and was there concentrated by steamboats on the rivers you have mentioned?

A. Yes sir.

Q. In 1872, or shortly prior to 1872, did the Nashville, Chattanooga and St. Louis Railway bring into its system and begin to operate as a part of its system rail lines running west from Nashville, and crossing the Tennessee River at Johnsonville, and running to the banks of the Mississippi River at Hickman?

A. I did.

Q. Was that date and that event the first occasion when any rail line at Nashville had any interest in the through movement of any grain from the Ohio, Wabash and Mississippi Rivers via Nashville into the southeast,—any interest in the entire haul?

A. Yes, that was the only line.

JUDGE MACK: You mean that was the first time?

A. Yes, that was the first time.

MR. MCCONNICO: That any rail line at Nashville had any interest in the entire haul of the grain from these River valleys into the southeast?

A. Yes.

MR. MCCONNICO: Now, prior to that, when the Nashville and Chattanooga Railroad only owned a line south of Nashville, it was not concerned with how the grain got to Nashville?

A. No.

Q. It hauled it all out into the southeast, and it all came in by boat?

A. Yes.

JUDGE MACK: What was the time the Louisville and Nashville railroad from Louisville to Nashville was completed?

A. 1859; I ought to have made the statement that there was some business prior to 1872 that came from Louisville by the Louisville and Nashville Railroad, and it was carried south over the Nashville and Chattanooga road to southeast territory.

MR. MCCONNICO: I understand Major the Louisville and Nashville Railroad at the time you have mentioned had constructed a line north of Nashville, from Louisville to Nashville. It had at that time no lines to the south of Nashville?

A. No; you are right.

Q. It was a separate and distinct corporate entity from the Nashville and Chattanooga Railroad?

A. Entirely.

Q. Was it in 1872, the first railroad, and that was the Nashville and Chattanooga, acquired an interest

in the entire through movement of the grain from the Ohio River and connecting river valleys into the southeast territory?

A. That is right.

Q. Now, when did the Louisville and Nashville Railroad begin to operate a rail line south of Nashville, and then get in the same position as the Nashville, Chattanooga and St. Louis Railway found itself in, in 1872?

A. The Louisville and Nashville leased the Nashville and Decatur Railroad; it was, I think, in 1871 or 1872; and made a contract in connection with that lease to complete the South and North Alabama Railroad from Decatur to Montgomery, Alabama. I do not remember just when that railroad was completed, but I think it was in 1873. It had some interest, of course, in carrying business in what was known as Montgomery territory, after the road was completed to Montgomery, which embraced Selma, etc. The Louisville and Nashville Railroad was rather reluctant to introduce reshipping or anything else at Nashville. As a matter of fact, for a number of years it was not able over its own line—had trouble to handle the business that it had.

Q. Pardon me Major; I am trying to shorten it. I can get to this in a shorter way?

MR. ESTERLINE: The witness should go ahead in his own way.

JUDGE MACK: No—

MR. MCCONNICO: I hand you this blue-print map, Major Stahlman, and ask if that shows in a general way the relative locations of the Mississippi, Ohio, Cumberland, and Wabash Valleys; the construction and location of rail lines northward to Nashville, that you have described as the route when the Nashville and Chattanooga was constructed up northward to Nashville in 1854; the rail line running west of Nashville across the Tennessee River at Johnsonville, and to the Mississippi River at Hickman, completed in

1872, and the first constructed lines of the Louisville and Nashville Railroad Company north and south of Nashville. (Hands witness blue-print.)

MR. NEEDHAM: Is that the same as this blue-print here?

MR. MCCONNICO: Yes.

MAJOR STAHLMAN: What was your question?

MR. MCCONNICO: Is that a substantially correct map showing what it purports to show?

A. Yes sir.

Q. (I will ask for that to be marked as Exhibit No. 1.) How many miles—

MR. ESTERLINE: This shows at what date,—now?

MR. MCCONNICO: That is a correct map of those same things now, and then too.

MR. ESTERLINE: What do you mean by then?

MR. MCCONNICO: I mean that that map correctly shows the location of the rivers and the rail lines indicated on the map.

MR. ESTERLINE: What date; that is all I want to know,—when?

MR. MCCONNICO: Well, the witness has described that the rail line up north to Nashville marked Nashville and Chattanooga on the map was completed in 1854.

MR. NEEDHAM: I understood 1872.

JUDGE MACK: The witness said he thought it was in 1873, that the line south from Decatur to Montgomery was finished.

MR. NEEDHAM: Yes, that completed the system as here—

JUDGE MACK: From whatever date that was, he said he was not positive about the date.

MR. MCCONNICO: How many miles of railroad is represented by the line of the Nashville and Chattanooga west of Nashville, passing Johnsonville, and coming to Hickman?

A. 171 miles, I think; 171 miles.

Q. When that line was first begun to be operated

by the Nashville and Chattanooga Railroad, state what that railroad did in an effort to induce the grain, that you have said had been theretofore moved into Nashville exclusively by steamboats, to move over that rail line west of Nashville.

A. The Nashville and Chattanooga road had 151 miles, south of Nashville, and this acquisition of the line from Nashville to Hickman, Kentucky, gave it 171 miles north of Nashville. Of course it felt interested, inasmuch as it reached in the direction of the grain producing section, in carrying at least a good share of the grain and western products over this line, instead of allowing it all to be moved by river up to Nashville.

Q. Had it erected a free elevator at Hickman, Kentucky?

A. Yes, and it also established facilities for a transfer of freight from the steamboats plying on the Tennessee River at Johnsonville, and for a time ran a steamboat of its own from Hickman on the Mississippi to points on the Mississippi River above Cairo and New Madrid Bend, that being a very rich producing country of western products, grain, etc. But it did not find that it could successfully compete with the boats that were running between Cairo and Nashville, Evansville and Nashville, and St. Louis and Nashville, and the Wabash district to Nashville; in other words, that the boats getting the grain at any of those points—river points—could and were bringing it on to Nashville at a much less rate than the Nashville and Chattanooga Railroad could afford to bring the produce by boat to Hickman on the Mississippi River and thence over its rails to Nashville, and at a less rate than the boats running on the Tennessee River could bring the produce to Johnsonville plus the N. & C.'s rail rate from there to Nashville, it being estimated that it cost very little more to bring the produce direct by the boats to Nashville, than it did to carry the produce by boat

either to Hickman or to Johnsonville, and thus it left a very small revenue to the rail line owned by the Chattanooga road west of Nashville.

MR. MCCONNICO: In other words, notwithstanding the institution of the handling facilities and the moving facilities by the Nashville and Chattanooga at Hickman and Johnsonville, the grain continued to go into Nashville by boat?

A. Yes sir.

Q. And the rail line found that it had not yet met the steamboat competition?

A. That is right.

Q. Now Major state what was next done by the Nashville and Chattanooga line to meet that situation.

A. The Nashville and Chattanooga Railroad said to the merchants of Nashville, engaged in the grain business: The through rates from these river points to Southeastern destinations are substantially a given sum, adding the boat rate to the rate from Nashville south; and we want to bring that business over our western division; and we are willing, if you will help us, in competition with the Cumberland River boats, to bring this business over our line either through Hickman or through Johnsonville, to give you the benefit of the through rate from the original point of shipment to destination. You bring the stuff into Nashville over this line, and whatever sum may be necessary to equalize the rate between what our road from Hickman and Johnsonville plus the boat rate to those points may be to Nashville, and what the river lines running direct to Nashville are charging, we will allow to you under a reshipping privilege, and that is the way this reshipping privilege was started.

MR. MCCONNICO: Was that in 1872?

A. In 1872.

Q. Did that reshipping practice thus inaugurated create anything at Nashville, or was it voluntarily

given by the Nashville and Chattanooga Railroad, to Nashville?

A. Oh no.

Q. Was there at that time and had there been since 1854 at Nashville an existing active concentration market for grain going to the southeast?

A. Yes sir; Nashville had controlled the trade for a number of years,—had practically the entire trade for a number of years.

Q. And that was in 1872?

A. Yes sir.

Q. It was thus in 1872 that this reshipping privilege at Nashville (by which a stoppage in transit privilege was extended, while a through rate was applied from points of origin on the rivers to points of destination in southeastern territory) came into being?

A. Yes sir.

Q. Has it since existed?

A. Yes.

Q. Is it in form today the same?

A. Yes.

Q. Now, when the Louisville and Nashville Railroad became the owner of lines running both north and south of Nashville, was it confronted with the same situation that confronted the Nashville and Chattanooga in 1872?

A. Yes.

Q. And for the same reason, did it install the reshipping practice in the same way, that protected the through rate?

A. Yes sir. Let me state just a moment; I mean when the Louisville and Nashville acquired the lines over to St. Louis that that line became a factor, and of course desired to share in the traffic in the same manner that the Nashville and Chattanooga line west of Nashville was then sharing in the traffic.

MR. MCCONNICO: When the Louisville and Nash-

ville got lines running from the Ohio or Mississippi River via Nashville into southeastern consuming territory, it had the boats to meet to protect its rail haul west and north of Nashville. Is that correct?

A. That is right.

Q. Why was the method of protecting the through rate and extending the reshipping practice at Nashville adopted to meet the steamboat competition, in preference to a reduction of the rail rate from the Ohio and Mississippi Rivers up to Nashville?

A. There is considerable local consumption of western products in Nashville, and the rate having been fixed at ten cents between Ohio River points and Nashville, which was the rate fixed at the time, and is the rate now, it became necessary in the reshipping arrangement to reduce that rate to a point where it would meet the Cumberland River rate. But the railroads determined not to pursue a course that would exclude the Cumberland River lines from participating fairly in the traffic, certainly the local traffic; and therefore on the local business, that is, the grain that was shipped into Nashville for local consumption, the railroads maintained the rate of ten cents. The result was that practically all of that local business was turned over to the boats, and they controlled it practically all the time, except during the few months in the year when the river was very low, and the boats couldn't handle the business, then the rail lines got the business at the rate of ten cents; but that was only a short period of time, not exceeding on an average three, and certainly not more than four months in a year. There was another reason why the railroads did not reduce the local rate on the grain products to Nashville, because it necessarily affected the rates on other traffic. There must be a relation that one rate bears to another, even though the traffic may not be the same; but the value of the traffic, the risk of handling the traffic, the cost of transporting the

traffic, and all of those things enter into the making of the rates of transportation, and necessarily. Therefore the railroads could not afford to make a rate of seven cents on grain, and maintain a rate of ten cents on lumber, or ten or twelve cents on brick, or lime, or salt, or cement, or traffic of comparatively low value, and wanted to avoid that sort of trouble, and the railroads just said "Well, we feel that we have got to practically surrender this local business from the Ohio River gateways to Nashville during the period of time that the boats are able to run, and make something out of it if we can during the period when the boats do not run." That is one of the reasons why that rate has been maintained.

MR. MCCONNICO: Was it in order to protect their revenues that they thought it to be correct financial policy and economy to adopt reshipping as the means of meeting the boats on the through business, which was the bulk of the business, and at the same time leave untouched and maintain their different local rates north and west of Nashville?

A. Yes sir, the business was large. I verily believe that it would have cost the railroads two or three hundred thousand dollars a year at that time if they had undertaken to meet the steamboat competition by lowering that local rail rate on grain into Nashville.

Q. And by the reshipping practice, as I understand, the rail lines protected their revenues against the boats on the through business, which was the great bulk of the business, and distributed the burden of fighting the river competition over their entire lines north and south of Nashville?

A. That is right. It was never done to help Nashville. Nashville was in a position geographically to help herself. It was done to enable the railroads west of Nashville to share in the traffic that originated west of Nashville, in bringing it to Nashville, in competition with the boats.

Q. Did it, as a matter of fact, create anything at Nashville?

A. How is that?

Q. Did the institution of the reshipping practise create anything at Nashville, or add anything to Nashville?

A. Oh no.

Q. Was it but a means that the railroads adopted to deflect the traffic from boat to rail that was already moving through Nashville?

A. It did nothing for Nashville, except what Nature had compelled them to do for Nashville; that was all. She had the river and the boats, and what they did was not for Nashville, but because Nashville had these things, and they did it for themselves, and I think, if I may be permitted to make use of the expression, that they did wisely. They had lines west and north of Nashville, and they ought to take care of the interest of those lines, and they pursued the only course left open to them to protect those interests.

MR. MCCONNICO: In order that the record may briefly show something with reference to the importance of the Cumberland River at Nashville, I will put in a few photographs.

MR. NEEDHAM: Are these not already in in the record that has been introduced in evidence and admitted by the court?

MR. MCCONNICO: They are, but—

MR. NEEDHAM: Are we to duplicate these? We are running right into duplication.

JUDGE MACK: Those photographs were admitted at that time as part of the record that was presented to the Interstate Commerce Commission. Now you may reintroduce them as independent testimony in this case, by referring to them according to the way they are marked in the record which is now in. They may be considered then as physically the single copy, being in, but being in in a double capacity as independent testimony now, but as a part of that record, and save burdening the testimony.

MR. NEEDHAM: I was going to suggest, if I may, that if Mr. McConnico will just make a list of those photographs, with a proper reference, it will be unnecessary to take up each one.

JUDGE MACK: Very well; they may be introduced as showing what present conditions of certain things are.

MR. MCCONNICO: That is the point, may it please the court, I will identify them and we will not duplicate the photographs, but refer to the previous record.

MR. NEEDHAM: As to time?

JUDGE MACK: As to time and subject matter.

MR. NEEDHAM: You may state that, in asking the witness just what the photograph is, and when taken, with the understanding we may ask the witness anything about them.

JUDGE MACK: You frame the statement: Is Exhibit A the correct photograph, etc.

MR. MCCONNICO: I will do so.

JUDGE MACK: Go right on.

MR. MCCONNICO: I will ask you, Major Stahlman, if this photograph that I hand you represents a typical wharf scene at Nashville about 1865, before the inauguration of the reshipping practice.

MAJOR STAHLMAN: Yes sir.

MR. WIMBISH: I object to that, your Honor. I would like to know, does the photograph represent—

JUDGE MACK: Well you want to know what it is; where taken; what is it. Do you know what it is?

MR. MCCONNICO: Exactly; I know, and I know what the witness testified to before the Commission, and I was trying to shorten it; that was all.

JUDGE MACK: Suppose you state what it is; how it was taken.

MR. NEEDHAM: Was that taken in 1865?

JUDGE MACK: You can get at it very briefly. For instance, the moving picture shows give us the landing of Columbus in 1492, by having some people go

through the performance now, and what is desired is to know whether something was enacted to be photographed; that does not detract.

MR. MCCONNICO: I will ask you, Major Stahlman, whether this photograph which I will mark as your Exhibit No. 2 is a photograph of a wharf scene at Nashville.

A. Yes sir.

Q. From the absence of the suspension bridge in that photograph that preceded the present steel bridge at Nashville, and from the presence of the railroad bridge that is shown in the photograph, can you approximate the date; knowing of the time of the construction of those bridges, can you approximate the date when that photograph was made?

A. Yes, along in 1865.

Q. State whether or not the scene revealed by that photograph was a usual or unusual wharf scene in Nashville in those days.

A. It was not an unusual scene.

Q. State whether or not the steamers there at the wharf had their names on them, and state if that is therefore an authentic photograph of about the date you have indicated.

A. Yes sir.

Q. Did you know those boats at that time?

MR. NEEDHAM: May it please the Court, I do not like to be making objections, but there is no question that up to the time these railroads were built all of that traffic, whatever it may have been went by water; no one disputes that question, and it was large for that entire territory. There is no question about that. Why must we identify all of these scenes? I see there is a large number.

JUDGE MACK: Go ahead; you can put that all in one question. The only point in question is to find out whether this is something typical, taken on the date,—an actual representation. There is no other question.

MR. MCCONNICO: I hand you this photograph.

marked Exhibit No. 3, and will ask you to state whether or not that is an authentic photograph of a wharf scene, that is typical of today.

A. It is.

Q. Does this photograph, that I mark Exhibit No. 4, represent a correct photograph of a river and rail elevator and warehouse at Nashville which is reached by the incline track of both the Nashville, Chattanooga and St. Louis Railway and the Louisville and Nashville Railroad Company, and also by steamboats on the Cumberland River?

A. It is.

Q. That is there today?

A. Yes sir.

Q. Is this photograph that I now hand you, and mark your Exhibit No. 5, a correct photograph of the incline of the Tennessee Central Railroad Company's track that is built to the water's edge, at which place grain and freight may be handled from boats to cars now?

A. It is.

Q. Is this photograph, Exhibit No. 6, a picture of the tracks of the Tennessee Central Railroad alongside the river leading from that incline track I last identified up towards the wharf at Nashville?

A. It is.

Q. Is this photograph, Exhibit No. 7, a photograph of a section of the yards of the Tennessee Central Railroad in conjunction with the upper wharf at Nashville?

A. It is.

Q. Is this photograph I now hand you, marked Exhibit No. 8, a photograph of a section of those same yards, showing the new south bridge at Nashville in the foreground?

A. Yes sir.

Q. Is that bridge constructed high enough to always admit steamboats to pass under?

A. It is.

Q. I hand you this photograph, marked Exhibit

No. 9, and will ask you if that is a picture of the present bridge of the Louisville and Nashville Railroad Company over the Cumberland River at Nashville, in the foreground, and the new lower bridge at Nashville in the background.

A. It is.

Q. Is the railroad bridge a draw-bridge, and is the other bridge constructed sufficiently high so that steamboats can always pass through both?

A. Yes sir.

Q. Is this Exhibit No. 10 a correct photograph of the upper wharf at Nashville, taken from the east side of the river?

A. Yes sir; we have two wharves at Nashville.

MR. MCCONNICO: Now those photographs so far introduced, may it please the Court, are already in the record,—possibly not in that order, but they—

JUDGE MACK: Let me see them.

MR. MCCONNICO: But in the record before the Commission they appear as Exhibits Nos. two to ten, inclusive, to Major Stahlman's evidence taken before the Commission.

JUDGE MACK: Yes.

MR. MCCONNICO: Is this picture I now hand you a photograph of a tow boat handling barges in the Cumberland River at Nashville, alongside the Ryman elevator (a river and rail elevator), and showing box cars standing under the elevator?

A. Yes sir.

Q. That is your Exhibit No. 11.

A. Yes sir.

Q. And that photograph was not in the record before the Commission because I had not found the old plate, and that will have to be introduced in this record.

MR. ESTERLINE: Your Honor, I understand all these photographs are going in subject to that general objection, that the testimony is incompetent, irrelevant, immaterial?

JUDGE MACK: All right.

MR. MCCONNICO: Are there any rail lines at Nashville except the Nashville, Chattanooga and St. Louis Railway, and Louisville and Nashville Railroad Company, and the Tennessee Central Railroad Company?

A. No sir.

MR. MCCONNICO: That is all?

A. That's all.

Q. Have all three of those lines tracks that run to the river brink, incline tracks, for the handling of freight from boats to cars?

A. Yes sir. The Louisville and Nashville and the Nashville & Chattanooga handle through the river and rail elevator; the Tennessee Central has its track right down to the water's edge.

MR. MCCONNICO: A short distance east of the wharf?

A. A short distance east of the wharf.

MR. MCCONNICO: Is the Tennessee Central Railroad Company a road that connects with the Illinois Central at Hopkinsville, Kentucky, to the west of Nashville, and with the Southern and Cincinnati Southern at Harriman Junction, east of Nashville?

A. Yes sir.

Q. Will you briefly tell something of the amount of grain and grain products, hay, and commodities of that kind that were concentrated at Nashville all together by boat, before the rail lines west of Nashville were built?

A. Well, I can not state as to the volume. I have not any statistics, of course, but it was large, necessarily so, since the entire demands of the southeast practically were supplied through Nashville at that time, and for several years.

Q. To what extent would you observe the traffic in amount brought in by boat at that time, as I understood your office was only one-half block from the upper wharf?

A. You were speaking of that time? I thought you were speaking of another. As to volume, I do

not know the exact size of the wharf, but I suppose it is probably three hundred feet from the water's edge to the edge of the street, and six or eight hundred feet lengthwise of the river. I have seen that wharf time and again covered with bags on top of bags of grain and bales of hay, just literally covered with it and kept in that condition; that is, the boats would bring it in, and the people that brought the stuff to Nashville would ship it out as fast as they could; during the boat season there was continually a large amount of that business that just spread all over the whole wharf there for months at a time.

Q. Have you also seen grain on the lower wharf?

A. Oh yes.

Q. At the same time and in the same way?

A. Yes sir.

Q. Now, Major Stahlman, was that grain that you have mentioned grown, I mean largely grown, except what would come in from the upper Cumberland, in the valleys of the lower Cumberland, the Mississippi, and the Ohio and the Wabash?

A. Largely, yes. I think some from the lower Cumberland, but the bulk of it came from the Wabash region and the Mississippi and Ohio River section, New Madrid Bend, and the points between Evansville and between Cairo and St. Louis and the southern section of Indiana.

Q. That was true in 1870, we will say?

A. Yes sir, and prior to that.

MR. MCCONNICO: In this connection, so that it may be in the right place in the record, if counsel will stipulate about it, I have some extracts from the United States Census reports for 1870 and 1900 showing about grain production and the center of the grain production at those times.

MR. NEEDHAM: Was this the same as was before the Commission?

MR. MCCONNICO: Yes sir.

MR. ESTERLINE: I would like to examine them.

MR. MCCONNICO: Yes sir. I only ask a stipulation subject to counsel's right to examine.

MR. NEEDHAM: On behalf of the Commission, we have no objections to its introduction, subject of course to the general objection as to its materiality.

JUDGE MACK: Yes.

MR. WIMBISH: We have no objection to the form in which offered, but as to the substance.

MR. ESTERLINE: The same

Said extracts from the Census Reports are as follows:

EXTRACTS FROM U. S. CENSUS REPORTS.

In 1870, Illinois ranked first in the production of both corn and wheat. In that year, it produced 129,921,395 bushels of corn and 30,128,405 bushels of wheat. It still ranks first in the production of corn, and in 1900 produced 398,149,140 bushels. Its production of wheat in 1900 was 19,795,500 bushels.

In 1870, Indiana produced 51, 094,538 bushels of corn and 27,747,222 bushels of wheat. In 1900, it produced 178,967,070 bushels of corn, and 34,986,280 bushels of wheat.

In 1870, Missouri ranked fourth in the production of corn, her production being 66,034,075 bushels. In 1900, her production of corn was 208,844,870 bushels. In 1870 she produced 14,315,926 bushels of wheat; in 1900, 23,072,768.

In 1870, Kentucky produced 50,091,006 bushels of corn; in 1900, 73,974,220 bushels. Her wheat production did not give her high rank, in either 1870 or 1900.

In 1870, Tennessee produced 41,343,614 bushels of corn; in 1900, 67,307,390 bushels. Her wheat production in 1870 was 6,188,916 bushels, and in 1900, 11,924,010.

In 1870, Kansas ranked 13th in corn production and 18th as to wheat.

The Census shows that the center of corn production in the United States in 1870 was 90 miles southwest of Indianapolis. This would bring it practically to the valley of the Wabash River. It shows that the center of wheat production was 82 miles northeast of Springfield, Ills.

U. S. Census 1900, Vol. VI, pp. 24, 32.

MR. MCCONNICO: I want to ask you, Major Stahlman, with respect to some historical matters only very briefly, and only as to four or five of them; and I will ask you to state at what time the line of the present Illinois Central Railroad south of Cairo was completed to Cairo.

A. In 1873, according to Poor's Manual. Of course that is considered authority.

Q. Approximately, you know that it is right?

A. Yes sir; I do. I know that to be substantially correct.

MR. MCCONNICO: The main line of the Mobile and Ohio Railroad from Mobile to Columbus, Kentucky, was opened when?

A. 1861.

Q. And when was it extended from Columbus to East Cairo, a distance of only twenty-one miles?

A. 1881.

Q. As late as 1879, was the Illinois Central Railroad operating a transfer boat at Cairo to connect its north line with its south line?

A. It was.

Q. Was the gauge of the Illinois Central Railroad at that time, in 1879, different on the north and south of the river at Cairo?

A. It was, the southern section being five feet, while the line north was four feet, eight and one-half inches.

Q. The gauge of the present line of the Louisville and Nashville Railroad Company from East St.

Louis to Evansville was originally four feet, nine inches, while the gauge of its present line from Henderson to Nashville was five feet, and the bridge at Evansville was completed in 1885, I believe?

A. Yes, that is true. I think the gauges of all the railroads south are the same, but they were all changed in a single day. Had to be all changed in one day, at the same time.

MR. MCCONNICO: Was the reshipping practise, inaugurated in Nashville in 1872 as you have described, put in there by the carriers before there were any reshipping or transit practises at any of the Ohio and Mississippi River crossings?

A. Yes sir.

Q. Have all those crossings, or were all those crossings, after that time given reshipping and transit privileges equalizing the hauls through the crossings indifferently?

A. They were.

MR. NEEDHAM: Please ask that question again.

(Reporter reads back the question.)

MR. MCCONNICO: I mean by that, after these reshipping practises were so put in at Nashville as you have described,—were reshipping practises, after that time extended at all these Ohio and Mississippi River crossings, to equalize those crossings with each other?

A. Now, that is plain English. In the handling of the grain from the grain producing territory to the grain consuming southeast, yes; that is plain.

JUDGE MACK: You mean that that was done after the privilege was given to Nashville?

A. Yes sir. After the railroads south of the crossings were constructed, the reshipping privileges at the crossings were established in order to equalize the situation.

MR. MCCONNICO: Is it true that from 1854, that in 1854, and after that time, until some of these Ohio River crossings were connected by rail with the southeast, that Nashville was the only concentration

point for grain moving into consuming southeastern territory?

A. It was.

Q. And was it after that time that all these Ohio and Mississippi River crossing points acquired their rail connections with the southeast, and became what Nashville had been before then, concentration points for grain to be reshipped into southeast consuming territory?

A. Yes sir.

JUDGE MACK: That is not quite clear to me. You mean was it after 1854, or was it after 1872 or 1873, when you say they acquired their southeast connection. Do you mean their southern connection through Nashville to southeast territory, or any connection from north to south, passing through those points?

MR. MCCONNICO: I mean both. I mean to say this, as I understand the question and answer, that in 1854, none of these Ohio and Mississippi River crossing points were concentration points at all for grain, because they had no rail connections to the southeast, that when they did acquire—

JUDGE MACK: When was that, before Nashville acquired it, or after, or by means of Nashville's acquiring it?

A. After.

JUDGE MACK: That is, these Ohio River points had no southeast connection?

MR. MCCONNICO: Until after Nashville—

MR. NEEDHAM: May it please the Court, I do not want to have the record contain the statement that there was no connection in these river crossings in the south; as the traffic came down the river it was stored and shipped on.

JUDGE MACK: He means a rail connection.

MR. MCCONNICO: That is what I mean.

MR. NEEDHAM: There was the river connection south, and storage took place at the river crossings, awaiting shipment by river, the same as afterwards.

JUDGE MACK: You mean storage took place at these river points in the same way as at Nashville prior to 1873?

MR. NEEDHAM: In the same manner to this extent—

JUDGE MACK: Witness said there were no concentration points. Your statement would point to the view there were.

MR. NEEDHAM: There were to this extent,—the traffic stopped there; had to be reloaded, not at once, necessarily, but did result in storage at these points.

JUDGE MACK: We are trying to get at facts.

MR. MCCONNICO: Major Stahlman, before these Mississippi and Ohio crossing points acquired rail connections with the southeast territory, were they concentration points for grain?

A. Not for the Southeast nor the South.

Q. Did that grain and hay move by steamboat from the landings on the Wabash, Mississippi and Ohio Rivers to Nashville as the first rail gateway and concentration point for grain destined to southeastern territory?

A. That is right, for a number of years.

MR. MCCONNICO: Has the Cumberland River since the war, and within the last few years more particularly, been improved and by the national government?

A. Yes: Congress has appropriated considerable money. Obstructions, for instance, rocks and snags have been removed; locks and dams have been erected. In the upper and lower Cumberland both, marked improvement.

Q. Has that lengthened the navigable season of the Cumberland River?

A. Yes sir.

Q. Does the navigable season of the Cumberland River correspond with the season for the handling of grain crops?

A. Yes sir.

Q. Is the potential competitive power of the Cum-

berland River at this time, less or more, than when the reshipping practise was put in at Nashville?

A. More.

MR. WIMBISH: That is an expression of opinion; I object.

JUDGE MACK: It may stand.

MR. MCCONNICO: Is that due to improvements in the river and developments and improvements in the means of handling grain by water?

A. Yes sir.

Q. Major Stahlman, if the reshipping practice at Nashville were abolished and the rates—the local rates—in and out of Nashville as they now are were maintained, state in your opinion what would be the result upon the traffic that now moves from the Ohio River via Nashville into the southeast by the rail lines of these petitioners?

A. Well, it would take away all of the business from the rail lines north and west of Nashville. The Nashville and Chattanooga Company's road would be unable to carry any traffic at all, and the Louisville and Nashville lines north and west of Nashville would be unable to compete for the traffic at all. It would mean simply to transfer the business from the rail lines to the boats, for the inbound movement up to Nashville, and it would mean the transfer to other lines serving the southeast of that same business now being carried by rail lines via Nashville.

MR. ESTERLINE: We move to strike out expressions of opinion.

JUDGE MACK: Overruled.

MR. MCCONNICO: Are there other rail routes and rail lines, not mentioning these petitioners, that run from these several Mississippi and Ohio River cross-

ings into the southeastern consuming territory that do not run via Nashville?

A. Yes sir.

Q. Are the present through rates of these petitioning lines applied at Nashville by this reshipping practice, equalized and on a parity with the rates of other lines and roads that do not run through Nashville?

MR. NEEDHAM: I object, if I understand—

JUDGE MACK: He is asking whether the through rates—

MR. NEEDHAM: If he means, do they protect the rate by other lines on shipments through Nashville, then I understand.

MR. MCCONNICO: I mean, Major, to ask this: If the through rates of these petitioning lines via Nashville into southeastern territory (the all-rail through rate from the Ohio and Mississippi River crossings into southeastern territory) are the same as the rates of other roads and lines that do not run via Nashville but do run from those same river crossings to the same destinations in the same territory?

A. Yes. And that adjustment was one that created a great deal of trouble with the railroad people a good many years ago. The line competing from one point wanted a basis to suit itself, and another wanted a basis to suit itself, and it produced considerable trouble and loss. Finally these matters were all adjusted by arbitration, when Judge Cooley passed on them, and a settlement was made and has stood ever since, and is considered a fair adjustment of rates as between the various gateways, which they are seeking to maintain and preserve.

JUDGE MACK: That was in 1886?

A. Yes sir.

MR. MCCONNICO: Major, would the abolition of the reshipping practice at Nashville, and the main-

tenance of the rates in and out of Nashville, have any other effect than to divert the movement of these commodities from rail to boats in so far as the commodity would continue to move by Nashville, and to other roads and lines in so far as the commodity did not continue to move by Nashville? Would a deflection of the traffic to boats and other lines be the only effect of the abolition of the reshipping practice at Nashville so far as the volume of the traffic moving into southeastern consuming territory is concerned?

MR. ESTERLINE: Your Honor, this witness has given no statement or knowledge of conditions as to the present time. His entire testimony has been devoted to conditions that existed many years ago—I think down to fifteen years ago. Now, he is asked as to the effect of taking out the rebilling or reshipping practice at the present time. I think his statement a mere conclusion on the part of the witness.

JUDGE MACK: I think his experience would justify his opinion.

(By request the last question was read to the witness by the reporter.)

A. No, I think the tendency would be to divert—if the rates were maintained—to divert the business to other gateways, other points.

MR. MCCONNICO: That is what I understood myself to ask. Would the abolition of the reshipping practice at Nashville and the maintenance of the local rate in and out, bring about a deflection of the traffic to the boat lines for the inbound movement to Nashville, and a probable deflection of the traffic to other rail lines that do not go via Nashville at all?

A. I catch it plainly now; that is plain English. It would undoubtedly produce the effect of transferring the traffic to the boats of all the business that passes through Nashville. It would also produce a deflection carrying business away from Nashville to other gateways or points if the rates from the Ohio River were maintained.

Q. What was my question. Now what would be

the effect of abolishing the reshipping practice at Nashville and the maintenance of the rate in and out of Nashville upon the grain business at Nashville as it is at present organized and equipped?

A. I do not believe in the first place it would be possible to maintain the rates from the Ohio River; you could not do it. It would mean a cutting of rates through Nashville, and also a cutting of the rates which would follow from other gateways, that would necessarily meet the rates that are made through Nashville.

Q. How would it mean a "cutting of the rates"?

A. It would mean a reduction of the rates via Nashville. Really, you have got now a condition of river transportation and transportation rates by river based on what existed twenty-five years ago. How you have been able to maintain it I do not know, but it is a most remarkable thing, that in the light of a general tendency of downwardness in transportation rates all over this country where there is competition as well as where there is no competition, that the tendency has been downward; and yet the railroads leading into Nashville and out of Nashville have maintained what you call the ten-cent river rate basis from the river to Nashville against the competition by the boats that is more forceful and greater now than it was when this basis was established; and that instead of being considered a seven-cent competition, or rate of competition, it is nearer a four-cent rate of competition; and if your reshipping were abolished at Nashville to-day the boats would be in a position to establish a four-cent competitive rate from the Ohio River and that would make all other rates from the Ohio River gateways only four cents higher than the rate is from Nashville to-day; and it would finally result, if the railroads wanted to protect their interests north of Nashville, and their interests are much larger in some cases than they are south of Nashville, in doing something to prevent ruin and a wreck-

ing of the whole system and basis of rates; and I do not see how it would be possible to avoid that condition at all unless the competitive force of the Cumberland River in all of its fullness is recognized, and the railroads, having that competition to contend with, are to be permitted, through the simplest and most effective fashion to meet those conditions which I conceive reshipping to be, and I have had something to do with the establishment of reshipping arrangements and keeping them up—I conceive reshipping to be about the fairest you could possibly inaugurate. This does not mean the cutting of rates or favoritism to individual cities or sections. It means a basis of rates established on a fair and equitable basis and the maintenance of those rates. That is what it is for. In no case do the reshipping concessions made cut any through rate.

Q. In other words, considering the present potentiality of the Cumberland River competition, and the present rates by which boats could bring the business up to Nashville, if the reshipping practice were abolished, and the present rail rates maintained, the boat rate to Nashville added to the rail rate out of Nashville would cut through rates into southeastern territory?

A. It certainly would.

Q. And if that were done through Nashville then the other roads and lines leading from the Ohio River crossings would have to equalize?

A. Surely.

Q. And generally the rates from the Ohio River would be lower?

A. Certainly.

Q. Now, Major Stahlman, suppose the reshipping practice at Nashville was abolished and the grain interests at Nashville abandoned their present handling facilities as such on the rail lines, and constructed their handling facilities on the river, and sacrificed existing investments and made new investments necessary to that change; and put modern

watercraft in the river for the inbound movement of the grain; and after going to that loss for the reorganization of their business from the ground up on a purely river basis for the inbound movement, they succeeded, as you say they would, and could, in cutting (by boat up to Nashville and rail out to the southeast) the present through all-rail rates from the Ohio River to the southeast—what permanent advantage would that be to the grain men or grain interests of Nashville if the rail lines met the rate that they thus built up—that cheaper rate?

A. Absolutely none, and there would be no if or and about it, the railroads would meet the rates through other gateways and from other points unless managed by some dummy or idiot who did not know how to protect the interests he represented.

Q. What effect, Major, would it have upon the grain business at Nashville if reshipping was abolished and the rate in and out were maintained and the grain business had to be reorganized on the river basis for the inbound movement? State what that would mean in the way of damages to existing investments?

MR. NEEDHAM: Your Honor, I object to that question. In the first place the witness may not be competent.

MR. MCCONNICO: I do not mean in dollars and cents, to give a dollars and cents estimate of damages which would result from such a change, but only a general statement.

JUDGE MACK: I will accept your answer for what it is worth.

MR. MCCONNICO: I do not mean to ask now, if you please, Major, any statement in dollars or cents, but generally what would it mean in the way of damage that the grain interests at Nashville would suffer?

MAJOR STAHLMAN: Well, of course, it would very much curtail the business of these merchants; it would necessarily involve new conditions and changes. It would take from them the advantages—

I will not say advantages, but the fair opportunity they have had of doing business, and leave everything in a chaotic state and their investments in elevators and warehouses located on the lines of road, terminal yards at Nashville—

Q. And not on the river?

A. And not on the river,—would be of comparatively little or no value to them. I should say it would be very hurtful, although I would not undertake to say to what extent because I do not know.

JUDGE MACK: Let us suspend until 2 o'clock.

(Monday Afternoon Session, November 27, 1911.)

MR. MCCONNICO: Let me see, Major Stahlman, if I understand one proposition. If the reshipping practice at Nashville were abolished and the rate in and out maintained, and the grain interests reorganized on a purely river basis for the inbound movement of the grain and with improved river facilities and modern handling facilities the dealers at Nashville brought the grain to Nashville by boat at a sum so small that it would cut the through all-rail rate from the Ohio River crossings into the southeast—when that was accomplished, would the grain interests of Nashville have any compensation for the new investments and the sacrifice of existing values, or would their position then be relatively the same as it is now with respect to competing in the southeastern territory with the Ohio River crossings?

A. If you allow a combination of the rates from Nashville were the low rates Cumberland River boats could make, to establish the through rate via Nashville, and at the same time could maintain existing rates from the Ohio River crossings necessarily it would put Nashville where she was before any Ohio River crossings existed. It would make Nashville absolutely the only gateway to that whole country—in other words, put her exactly where she was

before there were any railroads built north or west of Nashville,—but as I said awhile ago, and I repeat, that is an improbable contingency.

Q. Why?

A. It isn't to be presumed that the railroads from the various Ohio River gateways, Louisville, Cincinnati, Cairo, Evansville and Memphis, would maintain a rate that would force that business back into the Nashville channel. We of Nashville would be glad to have it, but they are not going to let us have it. It would force every rate from the Ohio River to the Southeast to the basis of the rate made by boat from the Ohio River to Nashville, and by rail from Nashville South.

Q. Exactly, and when the other rail lines did meet the lower boat and rail rate that had been constructed at Nashville as the result of a sacrifice and large new investments by the grain men; when the other lines met that lower rate thus constructed, would the grain men after this sacrifice and after those large investments, be in relatively the same position as they are now with respect to their competitors at the Ohio River?

A. If the rates were equal from Nashville—through Nashville—with the other gateways the business of Nashville ought to be preserved and maintained. They would, however, only lose and would lose the investments they have, and the facilities at Nashville now, and be obliged to re-establish themselves instead of in connection with the railroads, with the river.

Q. And after they had done that and built up a cheaper rate by boat in and rail rate out and the other lines had met and equalized with that cheaper rate, would the grain interests be then as they are now relatively in the same position with respect to their competitors at the Ohio rate?

A. So far as the handling of grain is concerned, yes.

JUDGE MACK: What would the roads leading into Nashville be doing in the meantime?

MAJOR STAHLMAN: Well, now, Judge Mack—we were talking, as I said before, about what a railway manager who was not a fool would do, what would he, in charge of those roads, do? He would necessarily be obliged to cut the rates so as to meet the rates fixed by the river.

JUDGE MACK: Then they would not have to go through this disastrous period of knocking down the elevators and putting them up on the river?

A. Unless there were handling facilities at Nashville the railroads would have to rely on shipments at the Ohio River. They would be of no value to the Nashville shipper or railroads without the reshipping practice. It would mean through shipment from the Ohio River to the point of destination and the value of the plants, such as elevators and warehouses located on the railroads to-day would be of no account. That investment would go for nought and the additional investment, to have the same facilities, in connection with the river would be necessitated. There is only one way to make the elevators and warehouses of Nashville valuable, and of any value, and that is through the reshipping arrangement for which they were originally erected. Abandon this and there will be no rehandling and reshipping from Nashville.

JUDGE MACK: Well, now, if the result of giving up this reshipping—let me put it differently. If all of these consequences you have stated would follow with the competition on a 4 cent basis by the Cumberland River, what would a good railroad man do as to giving these same privileges to Atlanta and these other Georgia towns as an alternative to abandoning them at Nashville.

A. Well, it is not practicable to do in Atlanta what it is a necessity to do in Nashville. In the first place, it would require the consent and co-operation of all of the railways, south of Atlanta to make that reshipping system available at Atlanta. And then it would compel the lines from Nashville to Atlanta to

do for Atlanta exactly what you say now—or these gentlemen claim—ought not to be done for Nashville. It would really in effect bottle up the Cumberland River at Nashville, which is God's gift to that section, and through artificial means plant it near Atlanta.

MR. MCCONNICO: And when you say Atlanta that is true with respect to the other complaining points?

A. Of course.

Q. When the rail lines at Nashville extended the reshipping practice in the beginning, they did it because they had to, as I understand, to take the business from the boats and to keep it?

A. Exactly; in other words, to let their Western lines share in it, and participate in the carriage of it.

Q. I will ask you if the granting of a general installation of reshipping practices at the complaining Georgia points—at Atlanta, Macon, Valdosta and Montezuma and places of that character—would not be equivalent, by that means, which, I believe, you term "artificial," to putting those interior Georgia points in the same class with Nashville on a navigable river?

A. Yes, it would be like building a canal or river from the Ohio River down through to Atlanta and Montezuma and all those places. That is what it would mean in effect—in an artificial form.

Q. If transit privileges were extended to Atlanta, and Montezuma, and Valdosta and the other complaining Georgia points, would there be any principle upon which it could be denied to any and every point in southeastern territory, where there might be living one jobber who might want to go into the grain business?

A. None; no reason at all.

Q. A question or two with reference to the importance of the Cumberland River in the old days when the steamboats were the means of concentrating this commodity, or all western products, at Nashville, so far as the movement southward towards

Nashville was concerned. State to what extent there were steamboats in the river at that time and between what points regular boats plied?

A. Between Nashville and St. Louis; Nashville and Cairo; Nashville and Evansville; Nashville and Louisville and Cincinnati, and Nashville and Pittsburg.

Q. Any regular line to New Orleans?

A. No, after 1865 we had no regularly established lines between Nashville and New Orleans. We had prior to that time, but we did have boats that ran between Nashville and New Orleans, not on regular schedule time, but they did make the trips, and made them quite frequently.

Q. But prior to 1865 did you have regular schedule trips between Nashville and New Orleans like you did between Nashville and Pittsburg?

A. Yes, before the beginning of the Civil War, but not since or during the period of the Civil War.

Q. But prior to the Civil War?

A. Yes, between Nashville and New Orleans; and we did have this—we had after the war very good connections with New Orleans through our Cairo packet, which connected, not only with the lines between St. Louis and New Orleans, but between Cincinnati and New Orleans, and interchanged business at Cairo, so we had a regular line of steamboat facilities in that way.

Q. Did regular packet lines reach Memphis also from Nashville?

A. Of course. The New Orleans packets all stopped and handled business between St. Louis and Cincinnati and New Orleans, and there was considerable business handled by river between Nashville and Memphis.

Q. Did those regular lines of boats bring both passengers and freight of all kinds from even Pittsburg down to Nashville?

A. Yes sir.

Q. Connecting with the line of the Pennsylvania Railway to Pittsburg?

A. Yes, sir.

Q. So that freight from the east would move by the Pennsylvania Railroad to Pittsburg and then by packet boat making regular stated schedule trips between Pittsburg and Nashville?

A. Yes, before the Civil War and for some little time after the war, a year I think—probably two or three years after the war, and they did a good business. There was a large business between Pittsburg and Nashville consisting of iron products and eastern business, and also Wheeling was on the river. Same character of business in connection with the B. and O., so there was quite a large business of that description handled by the boats. The Cumberland River, you know, is not wide. You have often heard it said, "He is little, but he is old." Now, the Cumberland River is not wide, but it is awfully deep, it is really navigable to a much greater extent than a large portion of the Ohio River, although not half as wide, nearly three hundred miles above Nashville it is navigable for nine months in a year.

Q. I will ask you with respect to the safety of the river; is the river-bed rock-ribbed and safe—only slight variations in the channel?

A. It is really considered a very safe river. I do not recall an accident that has happened to a steamboat by reason of any defect or obstruction in the river since I have lived in Nashville. There was only one steamboat sunk, and that bore my name, and I think it went down because it did bear my name.

Q. What do you say, Major Stahlman, with respect to the City of Nashville being a proper place, and necessary place, to interrupt the through movement of grain from the west into the southeast for the purpose of conditioning the grain in transit, and prevent its spoiling?

A. Well, it is about midway between the grain producing section and the grain consuming section, and that is another point that weighed with the railroad people when they established this reshipping privilege. At that time the equipment of the railroads was

inferior—limited I mean—and the railroad tracks were not of the best and the delays were very great, and shipments from St. Louis, for example, or from a point beyond, to Atlanta, often did not go through promptly. It not infrequently happened that they were delayed from two, three, four and six weeks and sometimes two months. Cars were damaged on the line, or crippled on the line, and put on the side track, and the roads did not have the facilities for handling them as they do now; and grain became musty and damp and rotted, and the claims were simply without limit for damage to grain, and particularly to grain that was shipped from the point of production to the point of destination without rehandling en route. We had no such trouble on shipments from Nashville, because the distances were much shorter, and the grain men of Nashville sought to ship the very best stuff in good condition, and while we had a large number, aggregating large amounts, of claims on account of damages to hay and grain and flour and meal and all of that sort of thing, on shipments from beyond, we had very rarely any trouble of that kind on shipments from Nashville, and the railroads, of course, took that into consideration, in a way, in arranging for this reshipping business or handling business at Nashville, because they felt if the stuff was rehandled at Nashville it would be handled or reshipped in such a way as to enable it to reach destination, through rehandling, in good condition, and there is no doubt but what a large saving to the railroads was consummated in that way and through that arrangement.

Q. Well, then and now by the installation of stoppage in transit privileges at Nashville, where the grain can be rehandled and conditioned, have the railroads been saved money in the way of prevention of the preferment of claims against it for damage to the grain in transit?

A. Even under the inadequate facilities in the early period of the reshipping plan there was a great

saving when we had no elevators, but simply warehouses, and now, of course, with the elevators that have been erected by these grain people, and increased warehouse facilities, there is really no trouble on account of damage at all; because they do not let the stuff go out of their house at all, or out of elevators until it is put in good condition; and if it goes to Nashville in a condition where it cannot be reshipped at all, they simply do not reship, but sell it at Nashville in the local market and pocket the loss, or present a claim to the railroad. That is about the way the thing works.

Q. Only one more question and I will conclude. I want to ask with respect to Chattanooga on this blue print map that you have exhibited. It appears that Chattanooga is located on the Tennessee River, and the first rail line connecting Chattanooga with southeastern territory was completed up to Chattanooga some years before it was built from Chattanooga up to Nashville. Is that right?

A. That is right.

Q. Was Chattanooga on this first rail line into the southeast, and on the Tennessee River, a concentration point, like Nashville was later, when the rail line was built to it on the banks of the Cumberland River, and if not, why not?

A. Oh, not at all. Chattanooga originally was just a landing, called Ross' landing. There was no town there, and the Tennessee River was not navigable; and notwithstanding the fact that the Government has spent millions of dollars in removing the Muscle Shoals and deepening the channel, it is not practically a navigable stream now. If it had been there would not have been the same necessity of building the road from Chattanooga to Nashville; but it was in order that they might reach a navigable stream which would connect the southern country with the Ohio and Mississippi rivers, and the sections which produce the western grain in such large quantities, that they insisted upon building the railroad from

Chattanooga to Nashville; for the Cumberland River was navigable; and there they knew they could make the connections and reach the grain fields without interruption. The Tennessee River is hardly to be considered even now, and at that time it was not in the situation, because, whether the map shows that or not, it ought to show it, there was a little tramway from the foot of the shoals up to the head of the shoals, that was used in handling the traffic that reached the foot of the shoals by boat, to carry it to the head of the shoals and put on other boats. The Government has spent millions of dollars since that, and it is not now in any condition to offer any competition of potency.

MR. MCCONNICO: That is all, gentlemen.

Cross-examination.

MR. ESTERLINE: Major Stahlman, the rate from Cincinnati, Ohio, to Carolina territory—to Abbottville, is thirty-five cents, is it not?

MAJOR STAHLMAN: Well, now, you are talking about details that, if I had the tariff, I could tell you, but I could not say it is, because I am not familiar with the rates, the general adjustment I am familiar with—but as to particular details as to the rates—

Q. You have not any idea, then, about the details of any particular rates, or in what respect the railroads would have to adjust, if at all, to meet the situation, if the rebilling privileges were taken out as to a particular rate?

A. No; the only knowledge I have of the situation is this: that this adjustment of the reshipping privileges from Nashville, and from the gateways on the Ohio and Mississippi Rivers to certain points—not to all points, not from all gateways, or to all points—but from each of the gateways to certain points, were made on the basis of the distances, and the basis of their proximity to the grain producing

sections, and the necessity of equalization, to enable the various lines through the gateways to compete on equal terms with—

Q. Then as to the railroad companies losing all of this business to which you have referred, and the boat lines gaining all of this business, you have no idea how that would be done in the matter of the adjustment of any particular rate or rates?

A. Well, I do not think it would require a Solomon to answer that, nor a man in the situation of knowing details to determine that, but a man reasonably familiar with the influences that existed; and the same influences that existed twenty-five years ago exist to-day to a certain extent.

Q. The conditions have materially changed, have they not, Major Stahlman, from twenty-five or even fifteen years ago?

A. The change has been as I recited in the original examination, in such a way that to my mind—and I am speaking as a man who ought to know what he is talking about—I am astonished that the railroads have not within the last fifteen years, at least, found it necessary to indulge equalization measures at Nashville in larger shrinkage than they did when they started reshipping there in 1872. I cannot understand how they have been able to maintain the rates and allow an equalization of only three cents on Atlanta territory.

Q. Well, what I am getting at—have you finished?

A. No. The rates of transportation have all been materially reduced since that time. At that time, now, according to my recollection, the rate, for example, was about forty cents from Nashville to Atlanta, I may be mistaken as to that, forty cents from the Ohio gateways to Atlanta. There has been now a reduction of nearly fifty per cent. Now, if the rail lines have found conditions that seem to call for and demand a reduction of their rates, and they have been able to reduce the rates, and have reduced them, and are seemingly getting along pretty well under

the reduced rates, the steamboats on the Cumberland River which in 1872 were presumed to demand a charge of seven cents, why they should not have made a reduction, and why there is not a necessity for a larger amount to equalize the rates now than there was when the reshipping arrangement was inaugurated, I do not understand. The fact is, I believe, there does exist abundant reason for a larger equalization now than at that time, because of the increased capacity and facility of the steamboats to do business at less expense on the Cumberland River than in 1872.

Q. But is it not true, Major Stahlman, and I will not repeat it again, after this time, that the methods employed by the steamboat companies during that time twenty-five years ago, and twenty years ago, were rather crude as compared with the facilities now employed by the railroad companies for the handling of that business?

A. Yes; and as compared with their own facilities; so that for the handling of the commodities, the facilities of the railroads now are better than they were at that time and, of course, far ahead of what the facilities of the boats were then or now. No, I see no reason, nor do I see that there ever was a reason, why the same relative conditions should not apply to the boats that apply to the railroads. There ought to have been, and I imagine there was, certainly so far as the conditions of the Cumberland River are concerned—there has been very decidedly improved conditions; and if the railroads through a process of experience, have been able to arrange their affairs so that they can reduce the rates of transportation and probably make nearly as much money now as they did twenty-five or thirty years ago, I can see no reason why the boats should not do the same thing, especially when the Government has increased the facilities of the tracks of the boats at its expense, not at the expense of the steamboats. The Government has spent hundreds of thousands

of dollars on the Cumberland River, while the railroads themselves have been obliged to spend their own money to improve their road-bed.

Q. Both have improved?

A. Both have improved.

Q. Now is it not true that the grain is not hauled in bulk on the boats, but must be sacked and carried off and emptied from the sacks, and that that prevails now and during the Civil War time?

A. Those were the conditions in 1872, but not now. There is an elevator now.

Q. But they do not do it according to these figures?

A. They do not, but they could. There is a track adjacent to the water's edge on the Tennessee Central, and they could make a simple arrangement and there load their grain from the boats in the river right into the cars on the Tennessee Central Railroad.

Q. But you do not know of their doing that?

A. I think they are handling some grain now on the Tennessee Central; I understand that; but do not know it to be so.

MR. WIMBISH: At what time and in what year did the Louisville and Nashville Railroad establish rebilling at Nashville and other places?

A. Well, I think it was when the Louisville and Nashville acquired the Henderson Railroad through to St. Louis in 1878, or the early part of 1879. Then, of course, as I stated previously—

Q. I understand; but only the date?

A. I could not say specifically; it was certainly then, and I think likely to a limited extent even before that.

Q. What in your judgment would be the year, 1878?

A. Well, I should say certainly then. I regret I am not in position to state; I have not examined the records; but I think it was a year or two before.

Q. Before they acquired the line to Henderson?

A. I think that is likely, but I will not be positive.

Q. So then the Louisville and Nashville was not forced to establish rebilling at Nashville in order to protect the revenues on its line west of Nashville?

A. Yes, it was; it had a line and first-class line to an Ohio River gateway at Louisville, and that was at that time a large grain market, and grain moving to Nashville via that line should have had reshipping privileges, and did have it, on business that went via the Nashville and Chattanooga road to southwestern territory; and, if it did not, necessarily it would be obliged to accord the same privileges to the Nashville and Chattanooga Railroad, that might want to ship grain brought to Nashville over its western line, to be reshipped thence from Nashville over the Louisville and Nashville to Montgomery territory. Now, to make that plain. When the Louisville and Nashville Railroad completed its line to Montgomery, Alabama, the Nashville and Chattanooga road had prior to that date covered practically all southern territory. When the Louisville and Nashville, however, completed its road to Montgomery—

Q. When was that?

A. I said in 1873 or 1874, and I think I am right about that. The Louisville and Nashville Railroad and the Nashville and Chattanooga Railway drew a line a certain distance east of Montgomery—I wish I had the map to describe it to you. They said, now on this business west of this line, including Montgomery, Eufala, Selma, etc., the Louisville and Nashville Railroad will undertake to carry the business, because it is the shortest line. On business to Atlanta and territory east of the established line the Nashville and Chattanooga shall carry the business, because it is the shortest line. There were certain points between the two that were called common points as to which both lines would compete. Now the Louisville and Nashville said on all business going into your Atlanta territory—we will give you

the business that originates on our line at Louisville and other points, turn it over to you at Nashville. In return for that on all business that originates on your line, your Hickman line, or in connection therewith, that is going to Montgomery territory, you turn that over to us. Now, at the same time, the Louisville and Nashville road, my judgment now is, and I think I am right about it, said to them, now so far as reshipping matters are concerned on busjness that we bring into Nashville over our main line, you give the people the reshipping privileges to Atlanta and southeastern territory, and on all business that your Hickman division brings into Nashville over its line that people may want to reship into Montgomery territory, we will give the reshipping privilege into Montgomery territory.

Q. That is all very interesting, and I would not wish to abbreviate or to appear discourteous, but I want you to answer these questions. When reshipping was established in Nashville by the Louisville and Nashville Railroad.

A. Well, I have come just as near that as I could. In the first place, the reshipping into Montgomery territory I have never understood was involved in this case. It is only reshipping in so far as it applies to southeastern and Carolina territory, which I understand is here involved.

Q. Was your testimony before the Commission not that it was 1878 or 1879?

A. Well, I am not so sure, and that may be true.

Q. Would you say 1879, or what?

A. I gave simply my opinion as to my best recollection and judgment. If I said 1878 or 1879, I think I was mistaken. I think it was along in 1875 or 1876, some little time before the Henderson line was secured.

Q. Then the building of that line to Henderson was not the occasion of the establishment of rebilling at Nashville?

A. No, but it emphasized the necessity for it.

Q. Now, rebilling even at the earliest date you have mentioned, was several years after the completion of the Louisville and Nashville line to Montgomery?

A. Yes, I think I stated that also.

Q. Now, of course, if the Nashville, Chattanooga and St. Louis put in the rebilling privilege at Nashville, why not the Louisville and Nashville?

A. I think I explained the condition of the Louisville and Nashville. I never shall forget the terrible time I had, and all on my shoulders. That road was opened before it was ready for business, and we wrecked thirty-five or forty trains in a short time. Some traffic was delayed between Nashville and Montgomery five or six weeks. I tried to satisfy those people because they had been deprived of a road through Atlanta, and they thought we had made them dependent on us, and on what we might see fit to do for them. Now the business of the road at that time was quite large from Louisville and Cincinnati and other points, and there was really no absolute necessity why the Louisville and Nashville Railroad should have created a through reshipping arrangement at that time. I want to be understood as saying, I do not know just exactly the day when the reshipping over the Louisville and Nashville was established. I will take great pleasure in investigating the matter and report the facts.

Q. I want to know your best judgment whether reshipping at Nashville was put in by the Louisville and Nashville Railroad to meet the competition of the Cumberland River or the competition of the Nashville, Chattanooga and St. Louis, that had already done so?

A. No, the competition between the Nashville, Chattanooga and St. Louis and the Louisville and Nashville on business for the south, did not exist to any great extent.

MR. WIMBISH: I do not care about the reason?

A. But I care about the reason and will give you

the reason. There was one small territory where they competed. There was no competition in the bulk of the territory.

Q. Now, Major, is it not true that the Nashville and Chattanooga never joined the Louisville and Nashville in rebilling at Nashville until after the Louisville and Nashville acquired the majority of the stock in the Nashville, Chattanooga and St. Louis, and purchased this line to Henderson, which had theretofore been negotiated for?

A. No, sir.

JUDGE MACK: I do not quite catch your question—the Louisville and Nashville never joined the other road in granting this privilege?

MR. WIMBISH: Yes, it was not reciprocal. The Nashville, Chattanooga and St. Louis confined it to their own lines, but did not extend the privilege.

JUDGE MACK: Well, to-day it is extended, is it?

MR. WIMBISH: Oh, yes.

JUDGE MACK: It does not make any difference over what line it comes in, provided it comes in over the Louisville and Nashville or a railroad—

MR. WIMBISH: Yes, it must come by rail; that is the only limitation.

JUDGE MACK: Come by rail, not over the Cincinnati Southern, could it?

MR. WIMBISH: Not to Nashville.

JUDGE MACK: That does not go to Nashville, but straight to Chattanooga. It could not go over the Illinois Central or one of its connections.

MR. WIMBISH: I do not think the Illinois Central is now a party to the rebilling.

JUDGE MACK: What is the Tennessee Central?

MR. WIMBISH: The Tennessee Central at the time this complaint was brought was jointly leased by the Southern Railway operating that line from Nashville to Harriman Junction, and by the Illinois Central operating that line north of Nashville. Some years ago both roads surrendered the lease, the

Southern and Illinois Central retired, so the Tennessee Central now goes from Hopkinsville down to Harriman Junction.

JUDGE MACK: Without any connections?

MR. WIMBISH: I do not think it has any.

JUDGE MACK: Then the only two lines that run into Nashville are the Louisville and Nashville and the Nashville and Chattanooga?

MR. WIMBISH: Practically.

MAJOR STAHLMAN and MR. NEEDHAM: No.

JUDGE MACK: The Tennessee Central has through billing?

MR. NEEDHAM: They have regular through service.

MR. WIMBISH: I did not mean to say that, your Honor.

JUDGE MACK: There is through freight service also. Do they grant this privilege to the Tennessee Central?

MR. WIMBISH: Yes, but I do not think the Illinois Central does.

MAJOR STAHLMAN: I do not know.

MR. CALLAWAY: You are correct, I think, about that.

JUDGE MACK: Then grain going over the Illinois Central to Hopkinsville would not have this privilege?

MR. MCCONNICO: I cannot answer that.

MR. WIMBISH: I do not think any such grain will be given to the Tennessee Central. They have their own lines. Traffic does not move that way.

JUDGE MACK: Yes.

MR. MCCONNICO: My information is there is reshipping at Nashville on grain that comes from Hopkinsville over the Tennessee Central road.

MR. CALLAWAY: I understand that the Illinois Central itself did not grant it because it does not reach Nashville. I understand his point to be—

Mr. Needham: Let me explain that these roads, all of them, while they give the rebilling privileges and the through rates, the tariff governing through rates

on all of these lines refers to all of these privileges, and concurs in them.

JUDGE MACK: The Illinois Central then establishing a through rate with the Tennessee Central would agree in the Tennessee Central's granting this privilege at Nashville, would it not?

MR. NEEDHAM: Certainly.

JUDGE MACK: You say no, and you say yes. Which is right?

MR. WIMBISH: I say, yes, your Honor; while there may be a through rate, while the Tennessee Central and the Illinois Central—I do say traffic does not move that way.

MR. MCCONNICO: The grain man says it does and he has moved it that way.

MR. WIMBISH: I say the tariff shows no rebilling is allowed.

JUDGE MACK: The tariffs show that?

MR. WIMBISH: Unless the grain comes from the Ohio River or beyond.

MR. MCCONNICO: Grain can come through Hopkinsville from the Ohio River, or beyond.

JUDGE MACK: Cannot it come from the Illinois or Ohio River region through Hopkinsville to Nashville?

MR. CALLAWAY: The Illinois Central gets its settlement through arbitrating beyond that, and need not be a party to that.

JUDGE MACK: With what line from Cairo to Hopkinsville is that the connection?

MR. CALLAWAY: The Tennessee Central takes care of it when it comes to Nashville, and the Illinois Central has its settlement on a different basis and does not have to be a party to the tariff.

MR. NEEDHAM: No one of the reshipping privileges applies to any grain that starts south of the rivers—originates south of the rivers?

JUDGE MACK: No.

MR. NEEDHAM: Anything at the rivers or beyond is covered by all of these—

JUDGE MACK: But if the Illinois Central takes hold at Evansville or north or west of Cairo it would come from territory to which that privilege is given.

MR. NEEDHAM: Yes, if it goes with a through rate and through billing it would—

JUDGE MACK: Now, you are all agreed.

MR. WIMBISH: Yes, we are all agreed on that. Now, Major, you spoke of Nashville as being a natural point for stopping grain in transit for purposes of treatment and conditioning it, and you referred to the time when that condition existed, when it required weeks perhaps to get grain to Nashville and to get it out. Is that changed any?

MAJOR STAHLMAN: Yes, sir; I said that was one of the things that originally happened. It still exists, but not to the same extent.

Q. Please answer this question. Cannot grain originating north of the Ohio River and going through the Cincinnati gateway, and passing by the Cincinnati Southern to Chattanooga, and also grain that originates, we will say, in Kansas, or Missouri, and going through the Memphis gateway and Birmingham, reach Atlanta within practically twelve hours?

A. Within twelve hours of the time it reaches Nashville.

Q. To Nashville, in other words, is Atlanta twelve hours distant, under modern conditions?

A. No, I should say not now.

Q. You are familiar with Atlanta. I ask you if Atlanta climatically is not as well or better adapted for the storing and treatment of grain than Nashville?

A. I do not think so. In the first place, Atlanta is further from the grain fields. Twelve hours makes much difference I think if grain or the product of grain were in a state of trouble, sweating or musty, that twelve hours in the handling of it, even assuming that twelve hours would be all that was necessary to move from Nashville to Atlanta, would be quite a

considerable period in which to allow the stuff to deteriorate and damage.

Q. Then I understand you, you think that that difference in time required to transport the grain from the field of production to Atlanta is sufficient to afford a substantial reason why grain should be stopped in transit at Nashville for treatment and not at Atlanta?

A. Not at all; I did not suggest that.

Q. What did you say?

A. I said it was one of the things that moved the railroad people to look with more or less favor upon the necessity for granting the reshipping privileges at Nashville at that time. I say now that eliminate that whole question, and it is a surprise to me that the railroads of Nashville, in view of the improved condition of the Cumberland River and the facilities of the river, as compared with thirty-five or forty years ago, are not obliged to shrink or to equalize, and to allow five cents on business to Atlanta territory instead of three cents.

Q. Well, then, you eliminate that question of stoppage for treatment as a substantial consideration in arriving at your opinion?

A. Well, I say in a measure it is eliminated, not entirely. It was not the actual reason, but helped to actuate the railroad people.

Q. Major, I understand you to say that the railroads could not reduce their rate on grain and grain products and hay from Ohio River crossings into Nashville for the purpose of meeting river competition, without having that reduction reflect in other ways?

A. I say that that is true to a very considerable extent.

Q. Very well, is not this true, that it is an every day occurrence that rates are increased in order to meet competitive conditions without at all affecting other rates?

A. I say this, that railroads do meet com-

petitive conditions on like products from different markets because of the necessity for the meeting of such competition, but what I intended to say and what I did say, I think, Colonel, was that an adjustment of rates or the establishment of a rate from the Ohio River to Nashville, an open rate, if you please, to meet the river competition of a four cents rate instead of ten, would be considered a most unusual thing, and create a most unusual disparity between the rates on grain and hay, and the rates on any other character of traffic of like value, and the cost of transportation of which is practically one and the same—no more and no less. Because if the railroads made a four cent rate, the public would say, and we have got to have some regard for the public, you know, give us the benefit of the rates on grain and hay. The man who is dealing in cement and salt and brick and mortar and lumber would say, why don't you give us the same rates to Nashville? My product is no more valuable than grain. What I am shipping costs you no more to move than it does to move grain. I can ship by river, but, perhaps, not to the same advantage. I have got to add a little for hauling about, but I can do that. You are making a specialty of the business of accommodating the grain traffic to the detriment of other business that is entitled to transportation just the same as the grain business.

Q. Now, let us test that for a moment. What other commodity moves on similar conditions over the railroad?

A. What other commodity?

Q. Does brick do it?

A. I just mentioned brick because it is a commodity cheaper than grain.

Q. Does cement do it?

A. Yes.

Q. In what way?

A. It can move by river or by rail.

Q. No; that is not my question. Is there any com-

modity other than grain products or hay transported from Ohio River crossings or beyond to Nashville at a less proportion than the rate to Nashville?

A. I say, if the roads make a four cent rate from the Ohio River crossings on grain, why not on nails and horseshoes and staves and all that?

Q. What I mean, Major, is this—

A. No, you don't mean that. I know what you mean. You mean if a reshipping rate is made on grain, why not make it on lumber, on cement, on salt and on all classes of that kind, in order also to draw that to the gateways of the Ohio River?

JUDGE MACK: Now, Major, suppose you listen to what the counsel asks?

MR. WIMBISH: Grain moving to Nashville takes a rate of ten cents from the Ohio River crossings; if grain moves to Nashville and beyond, that rate is shortened so as to make it seven cents from the Ohio River to Nashville. I asked you if there was any commodity that moved from the Ohio River to Nashville on similar conditions. If beyond Nashville it had another rate than to Nashville.

A. I do not recall any just now, because the grain is the item upon which this reshipping arrangement, and for which this reshipping arrangement was established, and because of which the roads are making such rates to Nashville. I do not know of any other product that occupies the same relation at this juncture. But unquestionably you would establish lumber yards and you would establish cement warehouses at the different gateways if you would fix a rate that would carry that stuff.

Q. That is not my point. As to these other commodities, the river competition has been met, and the rates reduced to a point that has destroyed the river competition to a large extent, as to dry goods and all high class articles, as to every commodity except grain.

JUDGE MACK: The local rate into Nashville?

MR. WIMBISH: Yes, and you say you do not meet

the competition in grain in the same way, but by this plan. Now is that true? How could shrinking your rate from seven to ten, or whatever was necessary, affect rates already adjusted to meet the river competition?

A. Now, my dear Judge, you are setting up a hypothetical question and knocking it down yourself. I want to say to you that there is traffic that comes into Nashville by river that does not consist of grain. There is any quantity of cement, salt, any quantity of iron and iron products. I think one of the pictures here shows barges of lumber; I think so, but there are all kinds of traffic that is gathered up at the river landings, and at important points on the river, that comes into Nashville.

MR. WIMBISH: Well, Major, you spoke of the fact that reshipping was established at Nashville before it was at the Ohio River crossings, and you stated that at that time the Ohio River crossings were not concentration points for southeast markets. Prior to 1883 or 1884, when the gauge of the southern lines was changed from five feet to four feet eight or nine —whatever it may be—there was no through movement by rail from points beyond the Ohio River to Nashville? There could not be, could there?

A. Why sure. That is, they simply there changed the trucks under the cars from the narrow gauge to the broad gauge. Hundreds of cars there at Evansville and Louisville and Cairo. It made the difference of only a few minutes delay by changing the trucks. The trucks of all the cars were interchangeable at that time. When a car from the South reached Evansville on a broad gauge track, there was a narrow gauge truck at Evansville to put it on. Then returning, the broad gauge trucks were again put under the cars on broad gauge tracks and carried South.

Q. Could that grain not move from the Ohio River crossings by the Baltimore and Ohio?

A. To what point?

Q. I am going to give you that. Say by the Chesapeake and Ohio and by the Baltimore and Ohio to Baltimore or Norfolk or Virginia cities, and then to the southeast coastwise or by rail?

A. It did to the coast points and at certain Carolina points. I do not recall any of that business going to the territory that is complaining here.

Q. Not into Georgia?

A. I think not, but if so it must have been a remote eastern point.

Q. Not to Georgia to-day?

A. I won't say no positively, but I hardly think so.

Q. Now, Major, you have a typical photograph here. (Mr. Wimbish asks for photograph No. 3.) Major, your exhibit No. 3 shows what is supposed to be a representative scene now at the Nashville wharf.

A. No, I did not say that. I said it was typical of conditions that exist now—not right to-day or to-morrow or next week, but liable to be any day during the boating period.

Q. Now, I find seven steamboats at the wharf. How many days in the week or year do you think there would be seven steamboats loading or unloading at the Nashville wharf?

A. I have seen more than seven repeatedly.

Q. But under existing conditions, how many days in the year would you expect to see as many as seven boats?

A. Of course I could not say positively; do not see the wharf every day or month, but it would not surprise me to go down any day and see just such a thing.

Q. Do you know when this photograph was taken?

A. No.

Q. Were those boats brought up there for the purpose of having them photographed?

A. No.

Q. Why do you say this?

A. I do not know any men in Nashville who would do such a thing.

MR. MCCONNICO: I looked through some photograph galleries in Nashville to get old and recent plates, if there were any, of typical river scenes. That, I state to counsel, is where these photographs came from. I know this plate was a plate I found in the photograph gallery of Mr. Thuss; do not know why it was made, but I do know that no boats were ever moved up for any exigency of this case.

MR. WIMBISH: I was not speaking of this case, but thought such occasion might have arisen under other circumstances. I wanted to know the circumstances under which the photograph was taken; that is all. Now, Major, you said that the potential competition on the Cumberland River was greater now than ever in the past, and you thought grain could be moved profitably at four cents by the boats. Why do they not do this?

MAJOR STAHLMAN: They are moving grain—a considerable portion of it. I do not think I said the competition was as potential, but the forces necessary to make it as potential, or even more so, existed to-day to a greater extent than when this reshipping arrangement was made, and I gave my reasons for it.

Q. What I want to know is if you are correct that the grain can be moved at four cents, why it is not done.

A. Well, it is done to some extent.

Q. But to a considerable extent?

JUDGE MACK: Why do they not knock out the railroads? What are the counteracting influences?

A. If there are any counteracting influences it is the known ability of the railroad people to meet any cheap boat rate that might be made available by large investments in modern river equipment, which would be rendered valueless whenever the railroads met, as they would, the boat rate.

MR. WIMBISH: I only wanted to find out why they did not avail themselves; you speak of the Cumber-

land River not being broad; have you not frequently seen it at Nashville when you could wade across it?

A. I would like to see you try it.

Q. Seriously, Major, have you not seen it when you could go across, rock to rock?

A. No, sir, I never have. A low stage of the water may have existed for a time because we have had dry seasons, and the river gets low, and you might wade through it up to your neck, and there would still be a pretty good gauge of water to run a boat—three or four feet of water would run a boat.

MR. NEEDHAM: May it please the court, I should like to draw on this source of information a little. The rebilling privilege, Major, is only applied where there are through rates; is that not true?

A. Yes, that is my information.

MR. NEEDHAM: Have there ever been any through rates by the river and railroads south?

A. By the river and railroads?

JUDGE MACK: You mean combination rates by river and railroads?

MAJOR STAHLMAN: No, I do not know that there have been.

MR. NEEDHAM: The shipments by the river, then, have all been confined to billing on the river from the point of origin to point of destination at Nashville. You mean to say that the shipments by river have been confined to billings from the point of shipment to Nashville?

A. To Nashville; yes.

MR. NEEDHAM: Necessarily, then, the shipment had to stop at Nashville, and be stored or taken care of until it was taken out and shipped by a shipper billing by railroad?

A. Yes, unless the purchaser or the merchant who had the cargo coming, and they were always advised of that, would make his sales and be ready to take the stuff immediately and put it on the cars.

MR. NEEDHAM: But in every case there was a break at Nashville?

A. Yes.

Q. The commodity or shipment was then entirely at the disposal of the consignee to keep at Nashville in store or send along at any time he saw fit?

A. Yes, because there never was any reshipping in connection with the boats.

Q. In that way it was that Nashville began to be and became a concentration point, was it not? The fact that there was a break in the shipment there originally?

A. Not necessarily, not because there was a break there, but because it was the most central and convenient and direct point.

Q. You would not say then that it was because of the break in the route and rate at Nashville?

A. Not at all; not at all; no.

Q. Prior to the building of the railroad from Nashville south, how was the grain transported south?

MAJOR STAHLMAN: From Nashville south?

MR. NEEDHAM: Yes.

MAJOR STAHLMAN: There was not any transported south.

Q. Everything stopped at Nashville?

A. No, sir; there was no grain brought to Nashville. Nashville was not a concentrating market or primary market for grain until after the completion of the Nashville and Chattanooga road, except for the grain produced in that immediate section of country; that is, middle Tennessee and the upper Cumberland River, the surplus of which was shipped by boat to New Orleans, Vicksburg and points of that kind. It was a market of that kind.

Q. Then the future of Nashville as a concentration point began with the building of the railroads to the south?

A. With the completion of that road, yes, sir; to a limited extent it was, in the way I told you, a concentration point for the grains of middle Tennessee and the upper Cumberland, and possibly lower Cumberland.

Q. What was the rate on the river from these what are now river crossings to Nashville by boat?

MAJOR STAHLMAN: When?

MR. NEEDHAM: Before the rebilling privilege was established as you say.

A. Seven cents was regarded as the maximum rate.

Q. At the time the rebilling privilege was established?

A. Yes sir.

Q. And the railroads established a rate from Hickman and Louisville of ten cents at that time, which has been maintained ever since?

A. Yes, it has been maintained.

Q. That was considered, then, at the time it was established, as sufficiently meeting the river traffic?

A. At that time, yes; yes.

Q. In what way did they arrive at the spread of three cents, the difference of seven and ten, in arriving at the railroad rate?

A. Well, they considered the rate of ten cents, or the basis of ten cents, as a basis on grain from the Ohio River landings to Nashville; and other classes of freight of a like character, and even all classes of freight higher and lower,—ten cents being a fair basis of rates. Let me make that clear. The railroad people in making a tariff, they take one class or one commodity, and they will take into consideration the distance and the competition, and all of the surroundings and circumstances that prevail, and determine what the rate on that particular product or particular class shall be. Having done that, then they arrange the other classes, and commodities in line with the class that they have fixed, that being pretty well determined—so much difference between the various classes—and they fix the tariffs on the entire business that way. In that way it was that the railroads determined that they ought to be able to maintain a rate of ten cents on business between the Ohio River gateways and Nashville.

Q. That is, they expected traffic to move over the railroad at ten cents when it was moving over the river at seven cents?

A. No, they really did not; not at all. I think—I am satisfied in fixing the rate at ten cents on grain, they practically yielded the local grain business between the Ohio River points and Nashville to the boats, barring the period of time when the boats could not run, and they put in the three-cent reduction or equalization of the rate in order to enable the railroads to secure the business for their lines north and west of Nashville on through traffic.

Q. Did not the ten-cent rate prevail before the establishment of the rebilling privilege?

A. No.

Q. What was the rate before the establishment of the rebilling privilege?

A. I could not tell you, but I am satisfied it was not.

Q. Do you not know there was a spread of three cents between the rail rate and the river rate prior to the adoption of the rebilling privilege at Nashville?

A. There may have been but I do not recall it.

Q. Is not the first rate put in ten cents by rail?

A. No sir, I do not recall it; maybe so, for the reason they might first have thought ten cents would handle the situation as to local business, and perhaps as to through business also.

Q. Well, as no rebilling privilege is necessary as to shipments by water at Nashville, why is it necessary to have a rebilling privilege at Nashville if the rate by rail was reduced to seven cents?

A. Well, I do not exactly catch your meaning. Do you mean, for instance, you would reduce the local rate?

MR. NEEDHAM: Yes.

MAJOR STAHLMAN: Well, that is what the railroads do not want to do. It means a sacrifice of several hundred thousand dollars to them; take all the

traffic which would have more or less bearing on the grain situation.

Q. Do not they reduce it now on grain to seven cents?

A. Not on local business; no.

Q. But as to through business?

A. Yes. And in many instances to more—In some instances to more than three cents, and I am surprised they do not in more instances. I think it is discrimination in favor of Atlanta and against Nashville to allow only three cents and I see no reason why it should not be five cents.

Q. Do you not know they do reduce to five cents in many shipments?

A. I think that is probably true. Competition on the river justifies it, and it justifies it even to six cents, and I want to say this that wherever they make less than a reduction of five cents—and I think the Atlanta territory that is complaining here is the only section that has less than 5 cents—it is a discrimination in favor of that particular territory.

Q. Will you explain how, please? How it is a discrimination?

A. Well it is this; it shows this. Now the charge, as I understand it, is that this arrangement is a discrimination in favor of Nashville. It shows that so far as Nashville is concerned in this matter it only has a three-cents reduction in the way of an equalization on business to southeastern territory. Now it has an equalization of five cents to some other territory. Now if there be any discrimination at all against any territory in favor of Nashville, it will be the territory under which, and by which, Nashville realizes a reshipping equalization of five cents and not to the territory, or against the territory, where Nashville equalizes to the extent of only three cents, when really the actual conditions would justify an equalization of five cents. Now, if, for example, they were allowing, on territory in which you are interested, and for which you are contending, the

Nashville shipper an equalization of six cents, and they were allowing only three cents to the other territory, then your people might come very properly and say you are discriminating because you are allowing Nashville shippers on our business six cents, and on business to other territories only three cents, so there is really discrimination, if you please, in favor of the territory which you people represent.

JUDGE MACK: That ought to make them happy. (Laughter.)

MAJOR STAHLMAN: It should.

MR. WIMBISH: It certainly makes us smile, your Honor.

MR. NEEDHAM: I want to ask you again, perhaps in another way, the question I was asking before. If a flat rate was put in to Nashville from the river crossings equal to the river rate, six or seven cents, whatever it may be, and a break in rates was made there, what disadvantage would it be to the Nashville dealer?

A. Well, that is exactly what you have now, and all he has got. He has the benefit of the rate from the Ohio River or point of origin to the point of destination.

Q. Well, if it was reduced to seven cents would he have the same advantage?

A. Yes; but you are asking us to do something that opens the whole traffic that will be hurtful. Pardon me for saying "us" for I am thankful I am not one of them. It results in just what you suggest, but they are doing it openly; they are doing just what you want them to do but in a way to protect their general business into Nashville. There is a vast volume of business goes into Nashville. May I make one suggestion? You take the packing-house proposition. We have a certain rate from the Ohio River on packing-house product. You cut down the rates on grain locally from the Ohio River into Nashville, and you must cut down your rates on packing-house business. That is an enormous business.

MR. NEEDHAM: You have explained that.

MAJOR STAHLMAN: That is an enormous business. We must do it on flour; you would have to do it on meal.

MR. NEEDHAM: Take the case of Savannah, Georgia. If there was a flat rate of seven cents from the Ohio River Crossings to Nashville, that rate would be one cent more than it is now under the rebilling privilege to Savannah.

A. Yes.

Q. Would that be an advantage or a disadvantage to the grain dealers in Nashville?

A. It would be a disadvantage.

Q. Take McCarty, Tennessee. There is a refund under the rebilling privilege of five cents. If there was a flat rate of seven cents from the Ohio River Crossings into Nashville, would not that be a disadvantage to the Nashville grain dealer of two cents?

A. How was that now? I do not know about McCarty. It is a new-born babe since I quit the railroad business, but I will say this, that very likely McCarty carries out the suggestion that I made, that is, in shrinking the rate from the Ohio River—the allowance might well be five cents. It is simply meeting to a greater degree the competition of the river.

Q. I don't think you quite understand me. Does the reduction of the rate from the Ohio River crossings into Nashville to any particular sum, give the same advantage to the Nashville grain dealer that it does to have this sliding scale of refund, ranging from three to six cents at different points in the southeastern territory?

A. Now if you could make that reduction open to Nashville, and avoid that enormous depression of the rates on all other business that is local to Nashville, and then you could maintain present through rates from the Ohio River points to southeastern territory, and give the Nashville shipper the benefit of that reduced rate you would have no gateways to compete with Nashville then. Nashville would be

put back where she was when she had one railroad. She would do all the business.

Q. If it was reduced, say, to seven cents?

A. No, I do not say that; but if reduced so as to disturb the existing conditions at Nashville.

Q. Well, suppose it was reduced to seven cents, a flat rate into Nashville; which gave the shipper the right to store it there and keep it as long as he pleases, not by rebilling privilege, but because it was a point at which the rate breaks to seven cents into Nashville, and to this the local rates were added to the different points, would the Nashville dealer have the same advantage in the southeastern territory as to-day with this sliding scale of from three to six cents?

A. Yes.

MR. NEEDHAM: Please explain it.

A. Yes, exactly the same. Seven is exactly what he is getting, except to some points he gets five.

MR. NEEDHAM: Some points six?

A. Wherever the shrinkage to the point does not exceed three cents, the Nashville dealer would be in the same position; the only difference being that the rail line having met the boat rate with the open rate, loses largely on its local business to Nashville; and also allows the control and regulation of its through rates on its through business, and the protection of its lines and its connections as to the through business to be unsettled with reference to rates via other lines through the Ohio River gateways, and its rate adjustment bandied about and endangered. The present system is intended obviously to secure the maintenance of the rates.

Q. Of what rates?

A. Of the rates from the Ohio River, we will say, those from the Ohio gateways.

Q. You mean those through by way of Nashville?

A. Yes, sir; all the rates from the Ohio River.

Q. The rebilling privilege, then, protects all of the rates?

A. Yes, sir.

Q. Over all lines from the Ohio River into the Southeastern territory; and your position is that those rates would be disturbed by establishing a flat rate into Nashville from the Ohio River crossings and allowing a break there so storage could take place?

A. Well, no, I will not say that. As long as the rate was fixed only at a sum representing the difference between ten cents and the minimum shrinkage of three cents, that is fixed at seven cents and made open, then of course it would not of itself disturb the through rates.

Q. Very well; that disposes of that. Let me get back to the grain dealer. Suppose it was reduced to seven cents. What would be the position of the grain dealer in Nashville as to all of these points where the refund is four, four and a half, five and six cents, instead of three?

A. It would be necessary to equalize.

Q. What would be the effect on the grain dealer?

A. If there were no equalization of rates it would be hurtful.

Q. What would be the effect upon the transportation companies; that is, the Louisville & Nashville, and the Nashville and Chattanooga, so far as carrying freight into this southeastern territory is concerned?

A. They would not be able to handle the business if the allowance was only three cents and the necessity to equalize demanded five.

Q. Yes. Well, these are controlling factors, are they not, in maintaining the rebilling privilege at Nashville?

MAJOR STAHLMAN: What is that?

MR. NEEDHAM: The factors you have just named, the maintenance of the stability of the rates from the Ohio River over all lines into the southeastern territory and the effect upon the grain dealers in Nashville.

A. No, they are not controlling. They are an essential part but not controlling. The controlling feature is—

Q. They are essential parts?

A. The controlling feature is the necessity for this kind of an arrangement to protect first of all, the rail lines north and west of Nashville, in an endeavor to secure business for their lines west of Nashville, and secondly, to prevent reduction of local rates into Nashville which would disturb the situation and cost hundreds of thousands of dollars.

Q. How so, if they reduced the rate to seven cents?

A. It would follow, for example, that they might have to reduce the rate on packing-house products.

Q. Oh, you mean then the loss would occur by reason of reduction on other classes of traffic than wheat products and hay?

A. Yes.

Q. What would be the effect simply upon these products themselves, so far as local traffic is concerned?

A. That depends on volume of business. I cannot say.

Q. Are not the railroads carrying grain and grain products to-day into Nashville on the ten-cent rate as against the water rate of seven cents?

A. No, the through grain is all coming in on at least the seven-cent rate.

Q. I am speaking of purely local business.

A. No, they do not carry purely local business when the river is open.

Q. Do they not carry to the mills in Nashville on the ten-cent rate?

A. If they do, the milling in transit rate prevails and they have the benefit of it.

Q. I mean for local use at Nashville?

A. No, sir.

Q. You do not think the railroads carry any traffic at the ten-cent rate?

A. No, I do not think so, from points where the river competes.

Q. How about the transportation business on the river? Is it not true that all shipments of grain by water require that the grain shall be sacked?

A. Not necessarily.

Q. Do you know of any grain being carried in large quantities in bulk in boats upon the river?

A. Well, I did not see the barges, but some of the other gentlemen here can testify better than I can.

Q. From your own knowledge?

A. I know it can be done.

Q. How do you know it, Major? I want facts.

A. Because I have made sufficient investigations and know about the cost of steamboat transportation and the cost of barges and their operation.

Q. I am speaking now of the practicability of handling grain that way by boat.

A. That is what I am talking about.

Q. Does it not all have to be sacked?

A. No; barges on top of barges of grain—

Q. Goes down the river in bulk?

A. No, I do not know, but it is done on the lakes and can be done on the river.

Q. But is it done on the river?

A. No, for the very reason that the conditions that have protected the railroads and shippers have not made it desirable. Now if a railroad was to try to take away the advantages that Nashville has geographically, and hamper her rights, why they could not do it successfully to save their souls from perdition. The people of Nashville are able to protect themselves. They could establish a line of barges and bring the stuff to Nashville at two cents a hundred or two and one-half at the outside. They are not going to do that because they know very well the very moment they undertake it, it means trouble; it means whatever money they invest in that sort of business is practically lost, or endangered to say the least of it.

Q. Well, they can ship to-day from Nashville to points in the southeastern territory at local rates from Nashville out, can't they?

A. They do; the grain and grain products produced in middle Tennessee and concentrated at Nashville.

Q. Could they not bring to-day the grain from the Ohio and Mississippi River crossings and send it on from Nashville at this local rate?

A. Of course they could do just what I have suggested to you they would do, and would be able to do, if they assumed that the railroads would let them do those things; but the railroads are not liable to do that. Now I think that sufficient assurances of protection against any arbitrary advance of rates south of Nashville exist through the courts and the Interstate Commerce Commission, to give them the security they may need, so as to enable them to at least maintain the existing rates without an arbitrary advance; but they have no assurance that the rates from the Ohio River may not be torn into smithereens and the barges go to pot.

Q. The through rate to-day from the Ohio River crossings to, say, Atlanta is twenty-four cents. The local rate from Nashville to Atlanta is seventeen cents. Under present conditions, then, and at present rates, seven cents on the river and seventeen cents from Nashville to Atlanta, if there was no extra expenses that prevented it, wheat could be carried through by river and rail at twenty-four cents, could it not?

MAJOR STAHLMAN: River and rail at twenty-four cents?

MR. NEEDHAM: Yes.

MAJOR STAHLMAN: Yes.

MR. NEEDHAM: Seven plus seventeen cents?

A. Yes.

Q. Now if the boats are capable say of carrying it at four cents, as you have said, then it could be carried by boat and rail for twenty-one cents to Atlanta.

Why is it not done? Would not the traffic move at twenty-one cents that way as against twenty-four cents by rail?

A. Whenever that sort of condition arises, as I said before the lunch hour, the railroad people in control of the rates from the gateways will either have to be asleep, or be a lot of dummies, to let those conditions prevail.

Q. How could they prevent it?

A. By reducing the rates from the Ohio River.

Q. Then Atlanta would get the benefit of water competition on the Cumberland River?

A. Not at all, any more than any other town.

Q. Would it not get the benefit of water competition if that took place? Will you not answer that question?

A. It would get the benefit of the competition that would be brought into existence through the conditions you have described, call it water competition if you will; it would get the benefit of the reduction in the rates from the west to the south, and so would every other point.

Q. Take the case I put. If the wheat was brought in by water from the river crossings to Nashville at four cents and shipped on at the local from Nashville to Atlanta at seventeen cents, that would produce a twenty-one cent rate, would it not?

A. Yes sir.

Q. Would that not be better for Atlanta than twenty-four cent rate?

A. That, certainly—but every other point in the south would necessarily be reduced to the same extent.

Q. Let us take Atlanta. If that twenty-one cent rate was established by the low water rate to Nashville, and all the lines met it by putting in a twenty-one cent rate, is it not true Nashville would get the benefit from the water competition on the Cumberland River?

A. Yes.

Q. And all that southeastern territory?

A. Yes, every point would have the benefit of the lower rate, not any particular point; every local point in the whole southeast country.

Q. That is, it would have the rate reduced as the result of free competition on the Cumberland River?

A. Yes, natural competition; but Nashville, after all, would be primarily the beneficiary because Nashville would be the grain center and market of the west.

Q. Then I ask you this question. Is it not a fact then that the rebilling privilege bottles up the competition on the Cumberland River to Nashville?

A. No, it does not bottle it. We recognize the competition by making this equalization of three cents.

Q. Have you not already stated that if that privilege was taken out and competition left free on the Cumberland River to Nashville, it would reduce the rates all over the southeastern territory? Have you not stated that?

A. Yes, I stated that.

Q. Then is that condition not prevented to-day by the existence of the rebilling privilege at Nashville?

MAJOR STAHLMAN: Of reduction?

Q. Is it not prevented to-day?

A. Yes.

Q. Then is it not true the rebilling privilege bottles up the competition on the Cumberland River to Nashville?

A. No, sir; it meets it.

Q. What do you mean?

A. It meets the competition without the unnecessary slaughter of revenue to the railroads. My contention is, and that is the purpose of this whole reshipping scheme, that they may, without a sacrifice of revenue, reach a fair adjustment of rates which will be equitable to all the gateways, including Nashville, and that those rates may be maintained.

Q. By the maintenance of this rebilling privilege?

A. This rebilling privilege unquestionably has a tendency to help that situation.

Q. Does it not in effect prevent the spread of the water—the benefit of the water competition on the Cumberland River to points in the southeastern territory?

A. No, sir; it recognizes the water competition. The rebilling recognizes the water competition.

Q. I am going to present an argument on your evidence and I do not want to misunderstand you. If the competition was free—I have asked this once before but let us understand each other—on the Cumberland River to Nashville, by being met with a flat rate to Nashville, would not the competition on the Cumberland River extend to the southeastern territory and reduce rates?

A. Yes, if you would by that means establish, for instance, your rate of twenty-one cents to Atlanta.

Q. Have you not said that would be the result if they took out the rebilling privilege?

A. Yes, and a very hurtful result to the railroad companies to submit to that sort of an arrangement. They would have to reduce their rates.

Q. By reason of water competition?

A. No. Yes in that case. But the proposition that we are now dealing with is that we are doing in a measure the same thing only in a different way. Of course we are not actually reducing the rate to twenty-one cents because we do not think that is a fair adjustment. We think twenty-four cents is a reasonable rate.

Q. Well, how are you accomplishing it? Are you not bottling up competition on the Cumberland River to Nashville?

A. No, sir, but we are saying this to the boats on the Cumberland River: "You cannot use your facilities for the purpose of destroying ours. We will protect our interests in a legitimate way as far as we can and prevent you from destroying our interests."

Q. How do you convince them you can do that?

A. By the very methods we have adopted.

Q. What methods?

A. By the rebilling arrangement we protect the interest of the people of Nashville—but give no benefits they are not entitled to and should not have. The boats understand what we are doing. The boat people would be glad to have your arrangement brought about.

Q. Who would be glad?

A. The boat people.

Q. Is there anything that prevents the capitalists from putting boats on the river and carrying wheat at four cents?

A. Nothing.

Q. Why is it not done?

A. Nothing, except that that situation would be met. The railroads must meet it to reduce the rates from all the Ohio River gateways to all points in the south. I say that there is no reason or justice in suggesting or demanding that the railroads shall be guilty of that form of suicide, of destroying their own revenue or destroying their own business.

JUDGE MACK: We will have to suspend.

MR. DENISON:

Q. You said that salt, cement and iron and some other things now come into Nashville by boat. Did I understand you correctly?

A. Yes.

Q. What steps does the railroad take to meet the boat competition in these articles?

A. Well, they have a certain established rate that they think will meet it any of the time of the year round. It is nothing unusual for a boat from Pittsburg to load with iron or nails and come to Nashville, or to load at New Albany with cement and glass, and the same at Wheeling and Pittsburg and still come into Nashville and deliver the stuff.

Q. The railroads must meet that competition by reduction of rate?

A. No, sir. The railroads have a certain established rate themselves, as on the grain at Nashville. Now if the boats come along, or barges, and take cargoes of that stuff into Nashville, it does not necessarily follow they will cut down their rates to meet those conditions that only occur periodically. There is not as much reason for cutting such rates as on the grain business, because that is a continuous business.

Q. What I want to know is merely whether there is any other way that the railroads take to meet the boat competition in any article except grain, than an arrangement of rates.

A. Yes, they do. They have established a line of rates from Pittsburgh and from Wheeling, Cincinnati, New Albany and Louisville on these particular classes of business, that under ordinary conditions will enable them to share pretty largely in that traffic, but the rates thus fixed are influenced by the rates that the steamboats, even these boats, that come periodically, may make. I do not think they have been coming so much in the recent past as before, into Nashville.

Q. Is there any other article than grain in which the water competition is met otherwise than by the size of rate?

JUDGE MACK: You mean anything like rebilling applicable to any other products than grain and hay.

A. Oh mercy, yes! Not in our section of the country so much. I want to say this to you. Even in some sections of the country you know they have rebilling arrangements on iron, and take iron—

MR. DENISON: You do not understand, Major. I am speaking with reference to Nashville; if there is any method of meeting water competition in other articles than grain that does not involve the size of the rate only.

A. I think not,—the tariffs will show—I will say

those tariffs are primarily based on what the grain rate was fixed at—at ten cents. I think the railroads are maintaining those tariffs. I think they are not exorbitant tariffs. I think very fair.

Further deponent saith not.

(Tuesday Morning, November 28, 1911.)

E. M. KELLY.

(Reporter's note: The witness, E. M. Kelly, was sworn by Judge Mack.)

MR. MCCONNICO: Your name is E. M. Kelly?

A. It is.

Q. Mr. Kelly, what is your occupation at present?

A. The milling business.

Q. And with what company?

A. The Liberty Mills.

Q. What is your position with that company?

A. President of the company.

Q. At Nashville, Tennessee?

A. At Nashville.

Q. What is the capacity of your mill?

A. We have a capacity of thirty-five hundred barrels of flour and two thousand barrels of corn goods.

JUDGE MACK: What is that, per day?

A. Per day.

MR. MCCONNICO: How long have you resided at Nashville?

A. About two weeks less than fifty-five years.

Q. How long have you been acquainted with the grain and milling business at Nashville and with traffic conditions at Nashville as affecting that business?

A. I have been actively engaged in the business since 1874 and during all that time that has been my special department.

Q. How long have you been with the Liberty Mill?

A. I organized it about twenty-one years ago.

Q. And before that time with what mills were you?

A. With several mills. Immediately preceding that, the American Milling Company.

Q. Are you familiar with the way that grain, grain products, and hay are handled into and out of Nashville by boat and rail?

A. Yes sir.

Q. Mr. Kelly, I will ask you to state whether or not the handling facilities at Nashville in the way of elevators and warehouses for grain, have all been constructed since 1872, when this reshipping practice was put in at Nashville,—I mean the handling facilities that are now there. Have they been built since the installation of the reshipping practice?

A. I think every plant that is now there has been built since that time.

Q. What per cent of the handling facilities are now exclusively on the rail line?

A. I have not figured it out and do not know the statistics, but every plant in Nashville except one is located only on railroads; that other one was located on both the railroad and the river, and that is called the river and rail warehouse. It is on the east bank of the river and also on the tracks of the Louisville and Nashville Railroad.

Q. And, also on the tracks of the Nashville, Chattanooga and St. Louis?

A. They have the terminal company there.

Q. I mean the terminal facilities at Nashville constitute a joint division of railroad property operated by the two railroads, the Louisville and Nashville and the Nashville and Chattanooga?

A. That is correct.

Q. And those two roads then with their tracks, as I understand, at their incline reach the river's bank at the river and rail elevator?

A. Yes sir.

Q. Has the other railroad at Nashville, the Ten-

nesee Central, also an incline track to the river's brink?

A. They have.

Q. I will ask you to state what would be the effect, Mr. Kelly, on the fixed investments in handling facilities for grain at Nashville that have been located on the rail lines, on the faith of this reshipping practice, if this reshipping practice were abolished and the present local rates into and out of Nashville were maintained?

MR. ESTERLINE: That is objected to as being incompetent, irrelevant and immaterial, and does not go to the power of the Interstate Commerce Commission to make the order and does not seek confiscation of property.

JUDGE MACK: Read it again.

MR. ESTERLINE: And also he has not testified it was put there on the faith of this rebilling practice.

MR. MCCONNICO: The answer to the counsel's objection, may it please the Court, is this, that of course we do not insist that if the Interstate Commerce Commission has not gone beyond its power, that a mere damage at Nashville resulting from a lawful order of the Commission, would justify any intervention by the courts; but this court does not sit to try moot questions, and it only exercises injunctive power to protect property interests, and the burden is therefore on us to show not only an invalid order of the Commission, but to show the damage that would result if the invalid order is not enjoined.

JUDGE MACK: I think you will have no difficulty in stipulating that if this order is invalid the enforcement would cause such damage that it should be enjoined. Is that correct?

Attorneys for Commission, Government and Georgia points, assented.

JUDGE MACK: Then you may regard that as stipulated in the record. If this order is invalid there is no objection to the injunction on the ground you have failed to prove sufficient money damages to se-

cure it. That being so there is no need to go further into that inquiry.

MR. MCCONNICO: Mr. Kelly, are you acquainted with the rates that have been charged by the boats in the past, and I am now speaking of handling the grain by ordinary packet boats, making local landings and bringing the grain from the lower Cumberland into Nashville, Tennessee. If you are acquainted with those boat rates, how have they run in the past?

MR. KELLY: They have ranged from six to nine cents a hundred by packet boats.

Q. What is the lowest per hundred pounds that boats have brought in grain for, that you know of: I mean ordinary packet boats in the business?

MR. NEEDHAM: Between what points?

MR. MCCONNICO: The Ohio River crossings or the lower Cumberland and Nashville.

MR. KELLY: I do not recall we have shipped anything by packet boat for less than six cents a hundred.

JUDGE MACK: Your answer to the last question?

A. Was six cents a hundred.

MR. MCCONNICO: I understand that is handling the grain in sacks; on packet boats that make local landings, and unloading the sacks by hand labor?

A. Yes, sir.

Q. I ask if you, as the president of your company, some years ago had an occasion to move some grain from St. Louis into Nashville by packet boat and barge?

A. We did.

JUDGE MACK: By barge you mean open, not in sacks?

A. No; sacked grain.

JUDGE MACK: Both sacked grain whether in barge or packet boats?—All in sacks?

A. All in sacks.

MR. MCCONNICO: How was that grain handled into Nashville?

MR. ESTERLINE: We want to make our general objection here that this is incompetent, irrelevant, and immaterial.

JUDGE MACK: All right.

MR. MCCONNICO: How was that grain handled into Nashville by the packet boat and the barge?

A. It was not a packet boat. I chartered a boat in St. Louis. I chartered two barges; one of the barges the insurance company would not accept, so I left the St. Louis elevator with one barge carrying twenty-five thousand bushels of grain all the way to Nashville by river.

Q. That grain was in sacks on the barge?

A. Yes sir.

Q. And how covered?

A. With tarpaulin.

Q. How much grain was thus brought into Nashville by this chartered boat and the single barge, by your concern?

A. I do not recall the exact number of bushels. We made five round trips. The occasion of this was that it was in the spring when business was heavy on the railroads and empty cars were scarce. I had a large amount of grain bought in St. Louis and could not get cars in which to move it to Nashville; so I chartered the boat and made five trips with it, hauling grain from the elevators in St. Louis to Nashville; and I carried cross ties back from the mouth of the Harpeth River, twenty or thirty miles below Nashville, to St. Louis.

Q. After you had made five trips, did you get any cars?

A. On my fifth trip around with the boat, some other grain men got on to the idea, and they sent one of those large Mississippi side-wheelers around with twenty-five thousand bushels of corn, and the two boats happened to reach the wharf at the same time, and that news was sent to Louisville and they immediately sent an order down the line, to give me all the cars I needed, and they sent me two hun-

dred and fifty cars and loaded a quarter million of bushels of wheat in five days. I did not need a steamboat any longer.

Q. Mr. Kelly, at what cost were you able, just on this one occasion, without being organized for this business—were you able to bring that grain by the process you have described all the way from St. Louis to Nashville; around what cost per hundred pounds?

A. I have not the—

MR. NEEDHAM: That is objectionable, your Honor, because it is an extraordinary case. It is not the ordinary traffic. I simply want to preserve the objections.

JUDGE MACK: You may answer.

A. I have not the figures with me, Mr. McConnico, and I do not recall what we received for the cross ties going back, but on the first trip from St. Louis to Nashville, we carried twenty-five thousand bushels of wheat, and it cost me one hundred dollars a day to run the boat. It took six days to make a round trip. This, however, included a day lost in loading cross ties down at the mouth of the Harpeth River. Now figure that, leaving out that time, it would have taken five days round trip, cost five hundred dollars, to bring twenty-five thousand bushels of wheat. That is about two cents a bushel, 3 1-3 cents a hundred, but it did not cost me that, because I had loads both ways, and I guess I could do it cheaper, because we made no landings at all.

Q. I understand that considering that you hauled only one way, however, on that venture, and regarding your boat as going back empty, and charging the expense of the whole trip to the transportation of grain up to Nashville, and without crediting anything that you received for carrying the cross ties back, it was brought up there for 3 1-3 cents per hundred pounds?

A. About; yes.

Q. I will ask you, Mr. Kelly, what, in your opin-

ion, with modern barges, say with modern barges and the well known modern appliances of to-day for the elimination of work and labor in handling grain from boats to elevators, or from the boats to cars—with those modern appliances what, in your judgment, could grain be brought from any one of the Ohio and Mississippi River crossings, like Paducah or Cairo or Henderson or Evansville, up to Nashville, including cost of loading and unloading?

MR. ESTERLINE: Objected to, your Honor.

JUDGE MACK: You may answer.

MR. KELLY: Well, I happen to know that they carry grain by steamer from Chicago to Buffalo for two cents a hundred. I believe that is between eight and nine hundred miles. I think it would be perfectly feasible and practicable to bring wheat two hundred and twenty-five to two hundred and fifty miles for at least no more than that.

Q. At least; no more than that?

A. You could not do that with your present facilities, but this is with the improved modern facilities.

Q. I am asking you to assume that you have modern tow-lines with modern barges and with well-known modern equipment, to eliminate labor and expense, what, in your judgment, could that grain be brought from those river crossings up to Nashville for, including the cost of handling?

A. Under those conditions, it could be brought for not exceeding two cents a hundred.

JUDGE MACK: You will demonstrate soon that it will be an advantage to Nashville to have all this done, so as to go into the carrying by water.

MR. MCCONNICO: I am going to ask this question that will throw some light on the question in your Honor's mind: Mr. Kelly, if grain can be brought by boat to Nashville for two cents per hundred, as you have said is feasible, why do not the grain interests at Nashville so bring in the grain.

A. Well, they would have to prepare for it. They would have to completely reorganize that business on

a river basis, have to locate their plants on the river, and would have to sacrifice their present investments, that are considerable; I believe our own plants cost between five and six hundred thousand dollars. I would not like to throw that away.

JUDGE MACK: How far is the haul from your place?

A. About a mile and a half from the upper wharf. It costs two cents a hundred to dray it; that is the current drayage rate there now.

JUDGE MACK: That would be from the steamboat to your mill?

A. Where it is located now. Now we would have to locate on the river; we would have to sacrifice our present plants, rebuild them on the river. Before that could be done, I imagine the railroads would then be hauling it down there for two cents, but no lower; then our sacrifice would be useless; we would be no better off relatively than to-day.

MR. MCCONNICO: Mr. Kelly, do the Nashville grain men realize that they can never hope to be anything except equalized with their competitors at the Ohio River crossings?

A. Yes, sir.

Q. And if by any process of sacrificing existing investments and making new investments they constructed a cheaper rate by boat and rail from those Ohio River crossing points into the southeast than the present all-rail through rates, protected at Nashville with this reshipping practice, what do you realize the rail lines would do when you had, after sacrifice and expense, constructed that cheaper through rate by boat and rail?

MR. KELLY: You mean the rail lines at Nashville?

MR. MCCONNICO: Not only those rail lines at Nashville, but the rail lines through the other Ohio River crossing points. If you had cut their rate through to the southeastern territory by boat and rail?

A. All the different roads, not only those through Nashville, would have to meet this new rate, and Nashville would be no better off than Cairo, Mem-

phis, Cincinnati. They would be on the same level.

Q. In other words, if you by boat and rail constructed a cheap through rate, that would cut the existing through rates, available at Nashville, you would bring about a general reduction of rates into all the southeastern territory?

A. There would be a wholesale slaughter of revenue earned by the railroads.

Q. Exactly, but would your relative position and ability to do business in the southeast be the same with respect to your competitors at the Ohio River as now?

A. It would. It would be unchanged from our present relative relation.

Q. There would be a deflection of the traffic for its inbound movement to boats until the rail lines met the rate that you had been able to build up by your boat and rail combination, I take it?

A. That is the only reason they do not have the boat lines there now is just the fear of that. Capital is a little sensitive. And that is the reason that the boats are entitled to a certain amount of business that they get. I think the railroads do not compete with them on local landings, and they are entitled to and satisfied with that.

Q. This reshipping rate now equalizes the Nashville grain interests with its competitors at the Ohio River and Mississippi River crossing points?

A. They do, and nothing more.

Q. And could you have and keep anything more than that?

A. No, sir.

Q. I will ask you to state this, Mr. Kelly: To what extent is competition in the grain business active, coercive and sharp, and is this traffic handled on a small margin of profit?

A. Well, competition is very sharp in the grain business, and the margins are very close. One cent a bushel would be a great big profit in the grain business.

Q. Any reorganization of the grain business at Nashville, using the Cumberland River for the inbound movement of the grain, would mean a suspension of business as it is at present moving on, I take it?

MR. ESTERLINE: That is objected to, your Honor. That is going back to the same proposition we had a while ago.

JUDGE MACK: You may answer.

Q. What would be the effect of a suspension of business, if there would be a necessary suspension of business, in reorganizing the grain business at Nashville on purely river basis for the inbound movement to Nashville?

A. It would require time. You could not rebuild in less than a year. At the end of that time what trade you have built up would be scattered, and you must get new trade.

Q. It would mean then, in view of the active and sustained competition the scattering of the present trade that you have last mentioned, as well as a sacrifice of existing investments on the rail lines, and as well as new investments on this river front, to get in a position to dictate a lower general rate to the railroads for all the southeastern trade?

A. Yes sir.

Q. I want to ask you to describe briefly the position of Nashville with reference to its being a proper and necessary place for grain, in moving from the fields of production to the fields of consumption, to be stopped in transit for the purpose of curing, conditioning or saving the grain itself.

A. Well, Nashville is kind of a half-way place. You get grain moving from Evansville to Atlanta, from beyond Evansville to Atlanta, to Nashville in probably one-half the time that it would to Atlanta or less than half the time. I believe the distance from Evansville to Nashville is 150 miles; from Nashville to Atlanta about 289 miles. In the spring of the year which is the heaviest shipping season

for corn, the normal temperature north of the Ohio River is below thirty-two; in other words the moisture in the corn is in a frozen condition. In Nashville, or any of those southern towns, Chattanooga, Macon, Valdosta, or any of these other places, the normal temperature is slightly above freezing. Corn in this frozen condition shipped from a cold climate and confined in a close car from one to three weeks, which is the usual time to reach destination on through movements at that season when business is heavy, would very likely get out of condition, become heated, and Nashville being close to the Ohio River, you can examine the grain there. You can tell whether or not it is necessary to rehandle it and air it and sack it and open the cars or send it on.

Q. As I understand that grain moving from the western grain fields or this northwestern grain country by the time it got to the Ohio River crossing points it might not need rehandling or treatment?

A. No, the Ohio River gateways have also a cold climate—not quite so cold as further north, but colder than Chattanooga, Valdosta and these other places, and it would not have been confined long enough when it got to the Ohio River to get out of condition.

Q. And no investigation at that place could develop that the grain needed any attention?

A. Not in all cases, no sir.

Q. Now by the time that same grain that apparently did not need treatment at the Ohio River crossings, got to Nashville, might it be plainly seen the grain did need treatment, or it would spoil?

A. Yes, that might happen.

Q. And then if the grain could not be stopped there, might it not be spoiled by the time it went to Atlanta?

MR. WIMBISH: Will you pardon me, your Honor. May I ask the relevancy of this evidence? It seems to me it goes to the question of discrimination.

JUDGE MACK: I suppose it is offered to show

whether Nashville is a primary concentration point, and that as a matter of fact it is a primary concentration point. On that theory it may be admitted.

Q. My question was that same grain now that at the Ohio River did not need treatment, by the time it gets to Nashville you can probably see it did need treatment, and if you did not there interrupt it and treat it, might that same grain probably be spoiled by the time it got to the nearest one of these complaining Georgia points?

A. Frequently when corn arrives in Nashville it is soft; the moisture has melted; it is warmer as confined in the car, and simply by taking the corn out and opening the car doors, the moisture will blow off in the atmosphere, and it does not need kiln drying, but in that soft condition, it would get hot and spoil before it got to Chattanooga; then it would have to be kiln dried.

Q. I will ask you if Nashville is regarded as the danger line beyond which going south, western grain shippers at some seasons of the year, decline to ship for delivery south of Nashville.

MR. WIMBISH: I object to that.

JUDGE MACK: Regarded by whom?

MR. MCCONNICO: By western shippers who decline to ship beyond Nashville for delivery south of Nashville.

MR. WIMBISH: I object to that.

JUDGE MACK: You may answer.

A. I can say this. Of course, some shippers do ship south, but I have had occasion to assist parties in Selma and one or two places in the south to get them a grain account.

Q. To get the grain where?

A. In St. Louis. I went to two concerns on the Chamber of Commerce floor there. Both of them told me that in the spring, in the germinating season, they would not ship south of Nashville. They feared grain getting out of condition. I argued that they sold on St. Louis terms anyway; it would not

make any difference. They said the people of the South would not pay drafts, and both they and the railroads are hard cases to get anything out of.

Q. In other words, as I understand, in a regular routine business way and in the way you have described, you made application for an account, and it was declined to have any account that at certain seasons of the year would involve shipping grain south of Nashville?

A. They said they did not care to do that kind of business at that time of year.

JUDGE MACK: There is lots of that business done by the Ohio River points.

A. Yes sir, and there is some done by St. Louis concerns, no doubt. I just told my experience with two concerns.

MR. MCCONNICO: Let me come to this point. Of course there is some done by the Ohio River points. Because of the fact that Nashville is a proper place, a midway point, a logical point to have the grain treated in its movement south,—I wish you would state something of the capacity of the handling and drying facilities at Nashville, especially the drying and sacking facilities, as compared with any of the Ohio River crossing points.

MR. ESTERLINE: I think that is immaterial.

JUDGE MACK: You may answer.

A. Nashville has three dryers in connection with two public elevators, the Nashville and the Hermitage, and ourselves. We happen to have one also. The capacity of our dryer is seven thousand five hundred bushels a day; the Nashville elevators also seven thousand five hundred bushels a day; the Hermitage elevator, which is owned by the Illinois Central Railroad, has a dryer, I understand, of one thousand bushels an hour, they could dry twenty-four thousand bushels a day at that rate, I think.

Q. Are there any kiln drying facilities of any importance at any of the Ohio River crossing points, and if so, at what points?

A. There is a dryer at Henderson and one at Cairo.

Q. How long have they been there?

A. The Evansville dryer was put in about four years ago; the Cairo dryer since that time.

Q. How does Nashville drying facilities, then compare with those at any of the Ohio River crossing points?

A. Nashville can dry more than all of them, including all of the Ohio River points.

Q. All put together?

A. All put together.

Q. I will ask you to state whether or not it has happened, and not infrequently happened, that shipments of grain from the west though damaged, were hauled through Nashville into southeastern consuming territory, and they had to be hurried back to Nashville to be dried to save the grain, and if you know of any instance where grain has been sent in large quantities from St. Louis to Nashville to be dried to save the grain?

A. Four years ago we had a corn crop, sort of like the present one, a good deal of moisture, and that spring the railroads had to bring back 150,000 bushels from Atlanta, Georgia, to Nashville to be dried, and they brought ninety thousand bushels from Birmingham, back from Birmingham to Nashville. They shipped small lots, not large ones, from Louisville, and the Updike Grain Company had one hundred and fifty thousand bushels in St. Louis that they shipped to the Hermitage Elevator, to be dried. I happened to be in St. Louis. Mr. Updike came to me and asked me to dry his corn for him. I declined, because I had eighty or ninety cars on the track myself that needed attention, and I suggested that he telephone the Nashville Warehouse and Elevator Company. He said he had done so, but they were three weeks behind. I asked him to call up the Hermitage Elevator, and they dried the grain.

Q. How many carloads?

A. One hundred and fifty cars; one hundred and fifty thousand bushels in that lot.

Q. Do you personally know anything of grain that has been hauled through Nashville having to be brought back to be dried?

A. There was a friend of mine who handled it, for Brother Barham over there (indicating Mr. Barham) and Mr. Compton. I do not know whether he is here or not. You had better ask them.

Q. As I understand, your mill does not ship grain at Nashville?

A. No; we are not interested in this case.

Q. You are not interested in shipping grain at Nashville, under this reshipping practice? You mill in transit and send out the grain under the milling in transit arrangement?

A. Yes.

JUDGE MACK: Then you are interested?

A. I am not directly interested, and refused to come to this case; if the Chairman had not subpenaed me I would not have come.

Cross-examination.

MR. WIMBISH: Mr. Kelly, this grain that is stopped in transit at Nashville for the purpose of being dried and conditioned is limited to corn, is it not?

A. Yes sir.

Q. And to corn only during the germinating period?

A. Nearly all together, yes sir.

Q. And as I understand you, largely, if not wholly, corn that left points north of the Ohio in a frozen condition; in other words, if corn comes down dry and unfrozen to Nashville, it will not need treating at Nashville any more at that season than any other will do.

A. No corn is dry; I believe No. 2 white corn permits 16 per cent of moisture in it, but I did not mean

to say, and I did not say, that all corn had to be handled at Nashville or anywhere else. Frequently grain will go through.

Q. Mr. Kelly, have you ever shipped any wheat or other grain by water into Nashville other than this special movement to which you have referred?

A. I bring wheat and corn, both, to Nashville every year by Cumberland River boats.

Q. Where does the wheat come from?

A. From Mississippi River landings and Ohio River landings principally; some, of course, local Cumberland River landings.

Q. Do you get in that way any that comes from the northwest fields?

A. We do not grind that kind of wheat; that is spring wheat.

Q. Have you brought any river crossings, Cincinnati, St. Louis?

MR. KELLY: By these Cumberland River boats?

MR. WIMBISH: Yes.

A. Only such towns as they serve—Paducah, Cairo, Evansville.

Q. What has been the extent of your shipping wheat from these crossings annually during the past years, or the past three years?

A. I did not prepare myself to give exact figures. Last year, however, I do know that we brought 65,000 bushels from Mississippi River landings during July and August, and about 100,000 bushels from Ohio River landings.

Q. I would like to know what landings.

A. I mean landings on the Mississippi River between Cairo and St. Louis.

Q. You mean local grain grown there?

A. Oh yes, grain grown in Illinois and Missouri.

Q. And that had not been transferred by rail?

A. No, it had not touched rails.

Q. So that your shipment has been limited to local grain grown along those valleys?

A. No, not limited, because I just testified that I

brought quite a bunch of wheat out of the St. Louis elevators.

MR. WIMBISH: I am not speaking of that.

MR. KELLY: We were very quiet and modest about that. I am sort of friendly with the railroad folks; speak to them when I meet them; I just wanted to force them to give me cars, and accomplished my purpose.

Q. Why, if you were able to deliver wheat at Nashville at two cents per hundred pounds by boat—why did you go back to the railroads?

A. Well, I knew what it would mean. It would mean it would force me—any rate that I could make if I hauled it to Nashville; and I did get my wheat to Nashville for nothing practically. The cross-ties back about paid my expenses you know. I would have the railroads to make the same rates if I made a business of that, and my plant happens to be about a couple of miles from this river warehouse, and it cost me one cent a bushel to get the stuff from the river to my mill not located on the river; one cent a bushel is enough for my profit over night.

Q. I was not asking why you did not make that line permanent, but why you did not continue with the wheat you had in St. Louis and complete that movement?

A. Did not have the chance. They shot a quarter of a million bushels at me in five days, and I did not have any more to ship. I bought f. o. b. the cars, and as long as the railroad furnished the cars to the elevators who owned this wheat, they loaded it down to me.

Q. Thus you have a better and more expeditious service by rail than by boat?

A. No, the time consumed to make the trip from St. Louis Elevator to Nashville was between two and two and one-half days. That was by boat. The time by rail is usually five or six, to thirty. I see Barham is shaking his fist at me. That is when business is congested on the railroads; that is the heaviest ship-

ping season. I have had grain come in red hot, because it took thirty days to get it from St. Louis to Nashville. The railroad paid me for that though.

Q. Mr. Kelly, this grain that comes by the Cumberland River by boat in the regular way, to Nashville—how much of it is grain grown in the valleys locally along the Cumberland River; and how much along the Ohio and the Wabash Rivers?

A. It would be the rankest kind of a guess, but I presume about 95 per cent is grown along the Wabash and Ohio Rivers.

Q. Is that corn?

A. I thought you were talking about grain.

Q. What percentage of wheat, corn, and other grains?

A. I do not know, but I should think 80 per cent of it would be corn, or possibly 85, and it is grown in the Wabash Valley and the Ohio River country, both Illinois, Indiana, and Kentucky.

Q. If you bought a carload of grain at Evansville and you brought this by boat to Nashville and the other man by rail to Atlanta, would not the rail service be as good?

A. Mr. Wimbish, ordinarily it would be quicker, but then in the spring, when business is very heavy, like four years ago, I think the boat would be the best, because I have had the railroads to take four days to get the stuff to my mill from East Nashville.

Q. All grain shipped by boat must be sacked?

A. With the present facilities, yes; not necessarily, though. It is shipped through the Erie Canal in bulk.

Q. You never had any movement into Nashville except by sack?

A. No sir.

Q. You are not a boat or river man?

A. No, not even a grain man.

MR. MCCONNICO: Mr. Kelly, what is the normal time, we will say, for grain coming by rail from St.

Louis to Nashville, when there is no extra heavy movement of the roads?

A. It ought to go, I should think, in three days.

Q. Can you bring it in by boat within three days?

A. I brought it in less time, that was a special boat, you know, that made no landings.

Q. There is one thing I will ask very briefly. You have described how the grain moving from the colder climate north of the river into a warmer climate becomes hot and spoils in transit. Is the length of the haul that the grain moves after it gets into the warmer climate and while it is confined in the cars the controlling thing?

A. It is the length of the time it is confined.

Q. Exactly. In the other case it was stated that Atlanta's climate was salubrious. Has the salubrity or the rarity of Atlanta's climate any bearing on the grain spoiling in transit, owing to the length of time it is confined in the cars?

A. What do you mean by salubrious?

Q. I mean this, Mr. Kelly. Atlanta's climate, as compared with Nashville's climate, as to rarity or humidity; has that anything to do with the question of the grain spoiling in transit, by reason of the time it is confined in the cars?

A. The controlling feature of damage in grain that has frozen moisture in it and shipped in a close car that could not get any air would not be materially affected by any climate it might go through. The air cannot get to it, and the moisture in there can not get out. It is not air tight, but—

Q. The length of time it is confined in the cars is the controlling feature?

A. Yes.

Q. You state, Mr. Kelly, that the spring was the germinating season. Is that the season when the grain is bought and moved largely into the southeast?

A. The germinating season is supposed to be from the first of January to the first of June.

Q. Is that the time when the shipments are heavy?

A. Yes.

Q. Does the bulk of movement from Nashville into southeastern territory occur at that time?

A. Yes.

MR. WIMBISH: Is grain reshipped from Nashville mostly corn?

A. Well, I do not know how much oats they ship, but as compared with corn and wheat I reckon about ninety-eight per cent is corn and two per cent wheat. What we buy, we grind, and we ship the products.

Q. Of the total tonnage of grain shipped, what is the percentage of corn, do you think?

A. I cannot answer that definitely, because I do not know what per cent would be used.

MR. WIMBISH: Mr. Kelly, you are a member of the Southeastern Millers' Association? Were you a member in 1903?

A. I have been president ever since it was an organization.

Q. Did you join in a request to the Louisville and Nashville Railroad, and perhaps others, on the part of the southeastern millers to abolish rebilling of flour at Nashville, on the ground it was discrimination against these other mills? Did you?

MR. KELLY: Abolish reshipping of flour?

MR. WIMBISH: Yes.

A. No, I did not join in that request. I was president of the Association, but was not at the meeting. That was one time that I was sick. Probably I would have joined in it. I wanted it stopped; I want it stopped now; reshipment of flour, that touches me.

Q. Why?

A. I want a monopoly of it.

Q. How so?

A. I do not want all of these fellows bringing flour in there and reshipping it.

MR. NEEDHAM: Will you not explain how that would work to your benefit?

MR. MCCONNICO: I think, may it please the Court, I have not been objecting, but I am doing it now on

this proposition that any reshipping practice on flour is not involved in this case.

MR. NEEDHAM: Yes.

JUDGE MACK: Grain products.

MR. KELLY: Milling in transit is not, but—

MR. NEEDHAM: How would it work to your advantage in creating a monopoly for yourself, to have this privilege of reshipping as applied to flour abolished?

A. Well, there are several concerns who bring flour into Nashville who would not bring it in there, but who would buy it from local mills, were it not for the fact that they had the privilege of forwarding or reconsigning on the basis of through rate.

Q. Do you not reconsign also?

A. No sir.

Q. You sell for local consumption entirely?

A. Oh no, we ship all over the world.

MR. NEEDHAM: Would not your reshipping then be affected by a change in the reshipping system?

A. No sir.

Q. Therefore, so far as these complaining Georgia points are concerned, as affected by milling in transit, you are on an equality with them and they are on an equality with you?

A. Yes sir.

Q. Because milling in transit applies there?

A. That is true.

Q. But you stated you are not in the grain business; but you are familiar with the way grain is handled in Nashville on the rebilling privilege?

A. Yes sir.

Q. You stated in answer to a direct question that the effect of the rebilling privilege was to put Nashville on an equality with the Ohio River crossings. I want to ask you just a question or two about that. Does the price of grain at the several Ohio River crossings remain the same at each crossing?

MR. KELLY: The price of the grain?

MR. NEEDHAM: Yes.

A. Not always.

Q. It does vary?

MR. KELLY: How?

Q. It does vary?

A. Yes sir.

Q. At different points, and any buyer seeking grain at the Ohio River crossings would naturally seek it at the point where it was selling at the lowest price?

A. Yes sir.

Q. Suppose a dealer at Abbeville, North Carolina, was competing with a dealer at Nashville, Tennessee, for the sale in Abbeville of a car-load of grain or more, and the lowest price was at Cairo, and assuming that they wanted to buy there because it was the lowest price, would the Nashville man have any advantage?

MR. KELLY: If Cairo was the lowest price?

MR. NEEDHAM: Yes.

A. The Nashville man would not be in it.

Q. Could he not ship it through at the same price as the Abbeville man could?

A. I do not understand your question. In the first place, let us get straightened out. Don't you mean Abbeville, South Carolina?

MR. NEEDHAM: Yes.

MR. KELLY: A man in Abbeville, South Carolina, wants to buy a car of grain.

MR. NEEDHAM: He is a dealer in corn and wants to sell to a consumer.

MR. KELLY: Where does he live?

MR. NEEDHAM: Abbeville or Atlanta.

MR. KELLY: Now, what is the question?

MR. NEEDHAM: I will change the question, so as to make it clear. The rate from Cairo to Abbeville is thirty-seven cents; the rate from Louisville to Abbeville is thirty-five cents.

MR. KELLY: That is right; and from Nashville would be thirty-two cents.

MR. NEEDHAM: Now, if the Abbeville man, assuming now that the lowest price prevailed at Cairo, and

that it was a dollar, the Abbeville man buying at Cairo would have to pay a dollar and thirty-seven cents added, would he not?

A. Yes sir.

Q. To get it to Abbeville?

A. To Abbeville.

Q. Could the Nashville man get it there any cheaper?

A. His freight would only be thirty-two cents a hundred, against thirty-seven.

JUDGE MACK: From Nashville.

MR. NEEDHAM: And the rates are the same from Cairo; but could the Nashville man sell the car-load any cheaper in Abbeville than the Abbeville man?

MR. KELLY: You have assumed that the lowest man is the Cairo man?

MR. NEEDHAM: No, I am assuming that the grain at Cairo was bringing the lowest price of any of the Ohio River points.

MR. KELLY: You mean the lowest price F. O. B. Cairo? The price F. O. B. Cairo is less than on the cars at Nashville.

MR. NEEDHAM: No, less than the price at any other Ohio River crossing, less than at Louisville, to put it in a concrete case?

A. It would have to be less than Louisville, because the rate is two cents higher from Cairo than from Louisville; I have not got it clear.

MR. NEEDHAM: Or is it not possible then for the Nashville man, under the rebilling privilege, to ship that car-load of grain, assuming it has been all shipped to Nashville, put it in an elevator and ship it out to Abbeville on a bill from Louisville and get a rate to Abbeville two cents less than his competitor, less than the Abbeville competitor?

MR. KELLY: The Abbeville man is the consumer?

MR. MCCONNICO: Where does this grain start from?

JUDGE MACK: I did not catch that last question.

MR. KELLY: May it please the Court—

JUDGE MACK: Strike out that last question and answer. Try it over again.

MR. NEEDHAM: I did not catch the last answer there.

JUDGE MACK: We will strike it out. The witness said he does not understand. Suppose you strike out what has gone before, Doctor (Mr. Needham). The witness says he does not understand. The answers given before are based on misunderstanding.

MR. NEEDHAM: Do you understand the manipulation of freight bills at Nashville by grain dealers?

MR. KELLY: Yes sir.

MR. MCCONNICO: I submit, may it please the Court, that that is not involved in this case.

JUDGE MACK: I understand your point. I do not understand what you mean by manipulation, Doctor. In view of the findings of the Commission and their order that anything in the nature of manipulation must cease, that this—

MR. NEEDHAM: He has stated—

MR. KELLY: I understand him to mean handling that in regular practice.

JUDGE MACK: Well, I do not know what he means. Let us get the right word for it.

MR. NEEDHAM: Do you understand the manipulation of these bills at Nashville by the substitution—

MR. KELLY: We do not substitute.

MR. NEEDHAM: Substitution of bills from Louisville on car-load to Louisville?

JUDGE MACK: That is forbidden by the Commission and is unlawful. That is not a practice, if indulged in. It cannot be the basis for consideration here.

MR. KELLY: It is not indulged in to my knowledge in Nashville.

MR. NEEDHAM: That is to say, so far as you know, every shipment out is on a bill of lading that represents a shipment from the point on the Ohio River to the point of destination which is represented by the rate charged?

MR. KELLY: Yes, of course it is done that way.

Q. You say it is done that way in all cases?

A. Yes, you have to furnish an expense bill, showing movement into Nashville before you can get a through rate.

Q. You know, as a matter of fact, that these grain dealers are shipping from all points except Cincinnati on the Ohio River, and putting it into warehouse at Nashville?

MR. KELLY: You mean elevators?

MR. NEEDHAM: Elevators; there it is stored and mixed and loses its identity entirely?

A. That is true.

Q. Suppose then that an order is made for a given point in southeastern territory, for a car or more of grain, what bill does the dealer in Nashville use in shipping that out? Does he not haul—put it in this way—use the bill which commands the lowest rate to that point?

A. When grain is brought into Nashville from different points, and loaded into a bulk grain elevator, it necessarily loses its identity. In shipping out a car to Abbeville, South Carolina, if he had a Cairo and a Louisville bill, he would have a right, if he had brought in a car from Louisville, to ship out a car by attaching a Louisville bill to his shipping tag.

JUDGE MACK: He could not use that twice?

A. No; once; he must have evidence of having brought it in.

MR. NEEDHAM: That prevails at the present time?

A. Oh yes.

Q. That is to say, the Nashville grain dealer uses the bill in the case which represents the lowest possible freight rates at the point of destination?

A. Yes sir. In places where grain is all mixed up, and it is impossible to say this grain came from Louisville, from Evansville, or Cairo, if he has an expense bill evidencing the fact that he brought a car in from Louisville, he has a perfect right to ship

a car out to Abbeville on that bill. He could not, however, with two cars on the track (one from Evansville and one from Louisville)—he could not switch those expense bills. The railroad would not permit that. That is unlawful.

Q. Then if that is unlawful, as applied to the cars themselves, after the grain has been mixed in the elevator, the rebilling privilege by the process which you have just stated does permit it, as a matter of fact.

JUDGE MACK: Doctor, the Commission has decided the rebilling practice legal.

MR. NEEDHAM: No, your Honor; I am not attacking it as such, but am endeavoring to show that by the rebilling privilege they give this advantage, that it is an advantage. I am not asserting that it is unlawful. But take the illustration I mentioned.

JUDGE MACK: Is there any question it is an advantage? Of course it is; that is why they want to keep it.

MR. NEEDHAM: If that fact is admitted, that there is an advantage by shipping in from all these points on the river, and putting it in elevators and losing its identity, and then having the rebilling privilege by which this is possible; if that is possible, that is all I want.

MR. MCCONNICO: By which what is possible?

JUDGE MACK: By which it is possible that a date later than the date of arrival of the cars. But as a matter of course that is an advantage; there is no question about it.

MR. NEEDHAM: If that clearly appears, that is all I want.

JUDGE MACK: That is one of the advantages of rebilling, is it not?

MR. NEEDHAM: It is.

MR. MCCONNICO: I do not understand that any car can be sent out on the basis of any billing, say Louisville, where the dealer has not actually brought in the car.

MR. NEEDHAM: No question about that.

JUDGE MACK: You can bring a car from Louisville, Evansville and Cairo, mix them together, and then ship out those three cars, and the points of destination to which you will ship them and the car to the destination to which you will ship each of these three cars, it may be an advantage to have one of those cars come from Louisville, one from Cairo, and one from Evansville.

MR. MCCONNICO: But after you ship all three, you will be in the same place.

JUDGE MACK: Let me explain the advantage—it is an advantage—to be able to mix these car-loads together, and to determine at a later date that the car that goes to Abbeville shall be the car that came from Louisville, and not the car that came from Cairo, whereas the car that will go to a point much nearer Cairo than Abbeville shall be the car from Cairo, whereas without this rebilling privilege you have to specify where the Cairo car goes to at the time it was shipped and where the Louisville car goes to. If you have an order at the time the Louisville car arrived for some point, say nearer Cairo than Abbeville, so you must ship that car-load to that place, you would not be in as advantageous position as now, by reason of the fact that, say, six months later you can determine the ultimate destination of each of these three cars from different places; that is the advantage the Doctor means.

MR. NEEDHAM: That is very well stated.

JUDGE MACK: That is of course an advantage from the rebilling practice.

MR. MCCONNICO: Then you have not made anything at all when you have shipped all of them?

JUDGE MACK: Certainly.

MR. NEEDHAM: That is all I desire to ask the witness on the point illustrated.

MR. WIMBISH: I want to develop that situation when I get the traffic man on the stand. On this idea, the petitioners allege that the purpose and ef-

fect of this privilege at Nashville—these transit privileges—is to equalize Nashville with Ohio and Mississippi River crossings, that it does that and nothing more. I will offer evidence along that line to demonstrate that it gives Nashville an advantage and preference over the Ohio River crossings, in that it places it on an equality with the most favored crossings in each particular instance. I am going to undertake to show that by virtue of that privilege Nashville can sell Cairo grain at a lower rate.

MR. NEEDHAM: That was the precise ground on which I offered this testimony, asking whether or not it did put Nashville on a parity with the Ohio River crossings. It puts it on a parity every day with the cheapest Ohio River crossings to some extent.

MR. KELLY: I do not know whether I answered that to the satisfaction of any—

MR. NEEDHAM: The court has stated the proposition exactly as I understand it.

MR. KELLY: I will add this. The Commission says the grain loses its identity when it comes into the elevator, but one can keep the three cars of No. 2 white corn separate, and can ship the identical car from Cairo to Montgomery, and the Louisville car wherever you please, and they will be no better off than if mixed. They do not get a rate nor get any advantage whatever by doing so. They are not able to ship from the lowest point each time, because the rates from all Ohio River crossings to all points in the southeast, are identically the same.

MR. NEEDHAM: You say the rates are all the same in the southeastern territory?

A. All points in the southeast; every point complained of, Montgomery, Valdosta,—

MR. NEEDHAM: You are talking of the complaining points?

A. And all points in the southeastern territory.

Q. You mean the rates are all alike?

A. All identically the same, to every point in the southeast.

Q. What do you mean by southeast territory?

A. The territory,—you had better ask these railroad men.

Q. I will not ask that; there is no question of the southeast territory; it includes the Carolinas?

JUDGE MACK: According to the map there is Carolina territory and Carolina territory south of Wallhala.

MR. NEEDHAM: There is a little Carolina territory in the southeast territory; a small amount. All Carolina territory, when spoken of has no reference to southeast territory, but does include Carolina. I suppose you used it in that sense?

MR. KELLY: No, I used it in the common acceptance of the term. The tariffs do not call it the same, but any tariff will say southeast, and the Carolina territory.

MR. NEEDHAM: The southeast territory is equally divided and the laws as given include Carolina.

MR. KELLY: But Abbeville is not included in Southeastern territory.

MR. NEEDHAM: Take this illustration: Where parties are competing—I am speaking now of competition between the Nashville dealer and dealers at these Georgia points—who are supplying consumers in the southeast territory, you may take any place—we will take Abbeville.

JUDGE MACK: But that is not in the southeast territory?

MR. KELLY: No; it is in Carolina territory.

JUDGE MACK: Let us take southeast territory; take Atlanta.

MR. NEEDHAM: At Atlanta, the rate is the same.

JUDGE MACK: He says the rates are the same from all Ohio River crossings to every point in southeast territory.

MR. KELLY: The tariff will show.

MR. NEEDHAM: I do not understand, your Honor, that in determining the question of discrimination between these Georgia points that are reaching out

for business, that they are confined to the southeast territory. It is spoken of as such, but they are reaching out for business wherever they can get it, and if they are discriminated against as to any points where they are seeking business, it is a discrimination, and the question is whether it is an undue discrimination. Now they may seek the business at Atlanta.

JUDGE MACK: You are not putting that case; you put the case of an Abbeville dealer that has no reference to the complaining points. We are confined in this case to the complaining points, and the effect of this discrimination on them.

MR. NEEDHAM: As centers of trade,—any of them—so far as the rates of those complaining points are concerned.

JUDGE MACK: No, as centers of trade. Well, then, put your dealer down in the center of trade.

MR. NEEDHAM: He may reach up to sell at Abbeville.

JUDGE MACK: The witness asked where was this dealer; you said at Abbeville.

MR. NEEDHAM: Very well; competing at any point, Atlanta, or any point, they sell the grain at Abbeville.

JUDGE MACK: All right; now you have a Nashville and Atlanta dealer both who want to sell in Abbeville.

MR. NEEDHAM: Yes. Now take this case,—the Abbeville case, because I am frank to say, your Honor, it is the only one I happen to have that illustrates just this situation. The rate from Louisville to Abbeville by the way of Nashville is thirty-five cents.

MR. KELLY: Thirty-five cents; thirty-seven from Cairo.

MR. NEEDHAM: And the rate from Louisville and Cairo into Nashville is ten cents. It is the same, so that the difference of two cents is from Nashville to point of destination. Now if the Atlanta dealer wants to sell in Abbeville and can buy the cheapest

at Cairo, or if he buys at Cairo, at one dollar, he must pay $1.37 to get his grain there. The Nashville dealer sells to Abbeville and uses at Nashville a Louisville bill, and he pays $1.35 for getting his grain there.

MR. KELLY: But to do that he must buy at Louisville and bring it to Nashville. The Atlanta man may do the same thing. I want to get the thing clear in my mind.

MR. NEEDHAM: Suppose there is an advance in the price of grain between Louisville and Cairo.

JUDGE MACK: When? At the time the Atlanta man wants to buy or six months after, when the Nashville man buys?

MR. NEEDHAM: At the time of the transaction or sale.

MR. KELLY: I will answer the attorney.

MR. NEEDHAM: I think I can make myself clear on this. At the time of the transaction, we will say, grain is selling at one dollar at Cairo and is selling at $1.02 at Louisville. This is arbitrary, of course, both parties, the Nashville man and the Atlanta man, buy a car-load of grain at Cairo at one dollar. The Nashville man ships it into Nashville, and unloads it into an elevator, and then ships from Nashville on a Louisville bill. He gets his car-load at one dollar, and ships it to Abbeville at $1.35, does he not, as a matter of fact, for this one transaction? Is not that a fact?

MR. KELLY: He could not do that.

Q. Does he do it?

A. No, not as far as I know.

Q. Does he not do that in every instance, using the lower bill, as you have stated?

A. He could not, unless he had brought the grain in his elevator from Louisville; then he had the legal right to use the Louisville bill.

Q. Does he do it?

A. He would be a "gillie" if he didn't.

Q. Then could he not get his grain for one dollar

and ship to Abbeville for thirty-five cents, so he could sell for $1.35; would that not be so?

JUDGE MACK: Doctor, you are losing sight of one element in your case.

MR. NEEDHAM: I will come to that if your Honor will allow me. Would he not get his grain to Abbeville at $1.35, when the other man must pay $1.37?

MR. KELLY: Can I answer in my own way?

JUDGE MACK: Yes.

MR. KELLY: Well, the Nashville man could do exactly what the Atlanta man could do,—buy a car at Louisville and ship at thirty-five cents; if shipped from Cairo, at thirty-seven.

MR. NEEDHAM: If the Atlanta man bought in Louisville, he must pay $1.02, then he would get to Abbeville at $1.37?

A. Yes sir.

Q. The other man could buy at Cairo for one dollar and get it there at $1.35?

A. No, the rate is thirty-seven from Cairo; $1.37 ordinarily, but if he took it to Nashville and put it into the elevator and shipped it out on a Louisville bill, he would get it there for $1.35, would he not? Can you not answer that?

MR. KELLY: What would he do with his Louisville car then?

Q. In a moment; will you answer the other question?

A. If he did what you said he would, yes sir.

Q. Now suppose he sold his Louisville car at Atlanta, in competition with the Atlanta dealer for local consumption? He would be, so far as the Louisville car is concerned, on an exact par with the Atlanta dealer in Atlanta; that is, he would ship it there at seventeen and ten,—twenty-four cents.

MR. KELLY: What car is he going to ship to Atlanta?

MR. NEEDHAM: The Louisville car.

MR. KELLY: And the price F. O. B. Louisville was

two cents more than at Cairo. Then he would lose two cents?

MR. NEEDHAM: No; I did not ask you to consider that he bought in Louisville at $1.02, but so far as the rate paid by him on the car shipped from Louisville, for sale at Atlanta, he is on an equality with the Atlanta dealer.

MR. KELLY: The rate is the same, but you assumed that the man in Louisville was paying really two cents more than the Cairo man, so he would lose two cents.

JUDGE MACK: Doctor, you did not assume at what he bought the car at Louisville, and that is the trouble with the whole problem. Or what it cost him to keep it in storage, whether ninety-eight cents or ninety-five cents or $1.20, six months before, and because of the absence of that fact I must confess that the whole example makes no impression on the mind of the court.

MR. NEEDHAM: Let me explain. These men are shipping in to Nashville and from a large acquaintance of men from all of these points, and being at varying prices, it is true. Now the prices at the Ohio River crossings vary from time to time, and whenever a dealer in Atlanta or any of these Georgia points wants to sell a car or more of grain at any point in the territory adjacent where they have a business they have not this rebilling privilege; therefore they cannot get any benefit from it at all by storing up. Now if they get to the Ohio River crossings to buy that particular order, and fill it, they would naturally go to the Ohio River crossings that were selling at lowest price. In this case, I have assumed that it was Cairo. Now when they go to ship that through, they must pay the full rate for there is no rebilling, whereas the Nashville man would buy a car-load at Cairo and ship it into his warehouse, but when he ships it out, he would use the lowest bill.

JUDGE MACK: If he has the car-load rate, he would ship it out and not have to buy. The question of what it cost may depend on what he paid at Louisville at any time.

MR. NEEDHAM: Not necessarily, your Honor. He could buy at Cairo a car-load of wheat at the low price then prevailing, and put it into the warehouse, and then ship out a car-load on the lowest billing possible. Of course the car-load loses its identity, but he has shipped it out on the lowest bill. Now as to that particular transaction at that time, the Nashville dealer at Atlanta or any of these southern points where they can not adjust the conditions in the same way. Now as your Honor very well stated, that bill from Cairo could be used at any other point where the dealer would be either on an exact equality or if it happened that he had a chance to sell it at a point where there was a varying rate and the Cairo bill would give him a less rate he could do that, but in no case would he be at a disadvantage.

JUDGE MACK: It is a great advantage to any man to have the privilege of storing his grain for six months, and gaining on the market instead of buying and shipping at once without the privilege of storing; that is, to get the through rate, plus the storage privilege. There is not a shadow of a doubt about the benefit of that.

MR. CALLAWAY: May I interpose an objection by calling attention and move to strike out that line of testimony, because the Commission has ordered us to put in the same arrangements at Atlanta identically. Therefore, if there is any advantage by rebilling, and I am not conceding it, in switching expense bills or any other matter of that sort, that is a form of reshipping, and ordered to be put in—

JUDGE MACK: That is not the object. The object, as I understand it is to show that the rebilling privilege is a distinct advantage, and that other testimony which he objects to, either that it has become an undue advantage.

MR. CALLAWAY: He tries to show that Nashville has some peculiar advantage.

JUDGE MACK: The same thing would apply to any place that had the rebilling privilege.

MR. CALLAWAY: Then, like the witness, I misunderstood.

MR. NEEDHAM: I do not attack the validity of this practice at all.

JUDGE MACK: You are simply trying to show what it gives the dealers. It gives them a great advantage, there is no doubt.

MR. NEEDHAM: I think your Honor does not quite understand the last point I tried to make. But assuming that at a given point of time there was by reason of a glut of the market a very low price prevailing at any given point on an Ohio River crossing, to take advantage of that particular situation, the Nashville dealer has a special advantage over that of the dealers who have not the benefit of the rebilling privilege.

JUDGE MACK: I can not see that that advantage results from anything except his privilege of storage. The question of whether he gets the advantage or not depends on the price he paid for the Louisville stuff. If he bought at a high mark he would have no advantage. He would save himself over two cents loss; he would otherwise have, but that might still be simply saving two cents over a greater disadvantage. Suppose he bought the Louisville stuff at $1.10; he still will ship the Louisville stuff to Abbeville. He replaces the $1.10 stuff with one dollar stuff. The stuff he sells at Abbeville he loses money on, but not by two cents as much money as he would lose —

MR. NEEDHAM: That depends on the market, not at that time, but on the general market as it may develop in the future. He may make money on his Louisville car; the rise in the price of the grain may take care of that.

JUDGE MACK: But the Louisville car is given in your example.

MR. NEEDHAM: But he can ship the Cairo car to any point upon an exact equality; he can not lose anything on that so far as transportation goes, and he has a chance of shipping into a territory where he has an advantage, the same as at Abbeville.

MR. MCCONNICO: That is all, Mr. Kelly.

Further this deponent saith not.

T. M. GALLAGHER.

(Witness is sworn by Judge Mack.)

MR. MCCONNICO: Captain, what is your occupation?

MR. ESTERLINE: What is his name?

A. T. M. Gallagher, steam-boat man.

MR. MCCONNICO: At Nashville?

A. Yes sir.

Q. How long have you been in the steamboat business at Nashville?

A. About forty-two years.

Q. What position do you now hold?

A. General Freight and Passenger Agent of the Cumberland River Steamboat Company.

Q. And what steamboat company were you with prior to your present employment?

A. The Nashville Transportation Company and the Ryman Line.

Q. How long were you with those companies, and in what capacity?

A. Manager; I was nineteen years with the Ryman Line; three years with the Nashville Transportation Company.

Q. And how long with the company you are now with?

A. Three years.

Q. Did you ever run on steamboats?

A. Yes sir.

Q. On what rivers?

A. On the Cumberland, Ohio, and Mississippi.

Q. Ever on the Wabash?

A. Yes sir.

Q. Have you for all these years that you have been traffic manager of these steamboat companies, been familiar with the rates charged for moving grain and hay into Nashville by boat?

A. Yes sir.

Q. Have you been familiar with where the grain came from?

A. Yes sir.

Q. I will ask you, Captain, where does the grain that comes into Nashville by boat come from; where is it grown?

A. Along the Ohio, Wabash, and Mississippi River Valleys, and the Cumberland Valley.

Q. Of what does the grain consist most usually?

A. Principally of corn, some wheat, some oats and some hay.

Q. I will ask you to state at this time about what tonnage of grain comes into Nashville annually by steamboat from the lower Cumberland from these grain valleys you have described.

A. From one to two million bushels.

Q. And where does the grain most generally come from?

A. From the Ohio River and Wabash River Valleys.

Q. I want to ask you with respect to the reliability of the Cumberland River as a means of water transportation, and first with respect to the safety of its channel. How does it compare with respect to dangers in that way with the Ohio River or with the Mississippi River?

A. The Cumberland River is considered practically safe from Nashville down, the safest navigable river west of the Allegheny Mountains.

Q. Why is that?

A. It is rock-ribbed, and the Government improvements in late years, in locks, dams, and the channel rarely ever changes in the Cumberland River.

Q. Has the Government a snag boat operating in the Cumberland River?

A. Yes sir, for years.

Q. For how long a time now on an average is the Cumberland River navigable every year, I mean now navigable for ordinary packet boats that will have the ordinary draft?

A. From nine to eleven months.

Q. Last year it was navigable eleven months?

A. Eleven months, yes sir, according to the Government report.

MR. WIMBISH: Did you say that was shown by the Government report, Captain?

A. Yes sir, for 1910.

MR. MCCONNICO: Captain, during all these years that you have been familiar with rates on the river, I will ask you for what price this grain has been brought in by packet boats in sacks; by packet boats that haul other things, and that zigzag across the river and make local landings, what has been the average?

MR. ESTERLINE: That is going in subject to the general objection made to the testimony of other witnesses?

JUDGE MACK: Yes. In the past how have those packet boats run?

A. The rate has varied from five cents a sack to nine cents a hundred.

MR. WIMBISH: Five cents a sack?

A. Yes sir.

MR. NEEDHAM: What is the weight of a sack?

A. It averages about 140 pounds, two and one half bushels.

MR. MCCONNICO: It has run, as I understand, from five cents per bag of 140 pounds to the bag, to nine cents per hundred pounds?

A. Yes sir.

Q. Captain, with the ordinary packet boat equipment, that is there now in the river, if you had a large steady tonnage of grain offered you at, say, Paducah, and you knew it was there, and you could get it in large amounts, and could bring it without stopping to make landings, or without stopping for other merchandise, what could that grain be transported by packet boat from that point up to Nashville for, and make a profit, with the ordinary equipment?

A. Well, with the facilities now that they have at Henderson, Evansville, Cairo or Paducah, taking these straight trips through, we could handle it for six cents a hundred pounds and make a reasonable profit.

Q. Now, Captain, with tow boats—a modern towboat, with modern barges, and with ordinary well-known equipment, to eliminate the cost of labor and handling, and assuming that you had offered you at these river crossings I have mentioned a large tonnage of such grain, say fifteen to twenty million bushels, and it was steady and reliable at those places, I will ask you to state what, with modern equipment and modern methods, that tonnage of grain could be moved from those river crossings up to Nashville, including the cost of handling, with modern appliances,—in your judgment and opinion?

MR. ESTERLINE: I object, your Honor.

JUDGE MACK: You may answer.

CAPTAIN GALLAGHER: You mean this grain in bulk and modern equipment?

MR. MCCONNICO: Yes sir; I mean modern barges, modern equipment for handling it from boat to elevator or car, and brought from those crossings straightway up to Nashville.

A. Two cents a hundred, sir, and that would be profitable to us.

Q. If that tonnage was offered to you in the way I have described, it could be brought to Nashville with profit at two cents per hundred?

A. Yes sir, that is my judgment on it.

Q. How many transportation companies at Nashville now own boats that operate in the lower Cumberland?

A. Two.

Q. What are those companies?

A. The Cumberland River Steamboat Company and the Rymon Line.

Q. How many packet boats does the Cumberland River Steamboat Company have?

A. Three.

Q. Please name them.

A. Steamer Nashville, Steamer Electra and Steamer J. B. Richardson.

Q. The Rymon Line—how many packet boats?

A. Four.

Q. Please name them.

A. Steamer R. Dunbar, Steamer Henry Harley, Steamer Bob Dudley, and Steamer Robert Rhea.

Q. Are you familiar with the tonnage of those boats and with the amount of grain that they are capable of carrying in bags?

A. Taking the total tonnage?

Q. Taking the total tonnage of those boats you have named.

A. Yes sir; I have been connected with all of them.

Q. Name their tonnage capacity.

A. It is about 2600 tons all loaded in one trip.

Q. You mean to say those steamboats

A. Those boats have a capacity of about 2600 tons.

Q. Of grain in sacks?

A. Of anything, but grain would be the same thing 2600 tons.

Q. How many sacks of grain, roughly speaking, could those boats bring?

Judge Mack: What is the difference? We have the 2600 tons.

Mr. McConnico: I was on the proposition that there is an expression about steamboat tonnage called "net tonnage." I want to differentiate the

tonnage you speak of from what is meant by "net tonnage."

A. Net tonnage? When a boat is completed, the United States takes the measurement of the boat and she is registered at the Custom House with the surveyor. This "net tonnage" that shows on all boats' license is the tonnage that the equipment is required to conform to. It does not mean the gross tonnage or the actual carrying capacity of the boat; for instance the boiler deck is taken off the tonnage; the cabin rooms are taken off.

Q. The net tonnage means the basis on which life saving equipment and things like that are calculated?

A. That is the idea.

Q. So the registered net tonnage of the steamers on our rivers does not indicate the carrying capacity in tonnage?

A. The only way we have been able to determine how much the boats will carry, we take it in the number of sacks of grain; we estimate actual tonnage frequently in that way. We get the weight from the elevator and that gives us the gross tonnage of our boats.

Q. In addition to these two lines you have named, Captain, I will ask you if there are other boats operating in the lower Cumberland.

A. During the heavy season, yes sir.

Q. To your knowledge has it been any infrequent thing for grain to be brought up the Cumberland River to Nashville by these transient boats?

A. During any heavy season they have not failed. Occasionally, rarely, we have a failure of crops; but when we have a heavy season the tow boats come to Nashville and have ever since my recollection.

Q. They have a large elevator with an incline at Cairo?

A. Yes sir.

Q. Railroad tracks there run to the river brink?

A. Yes sir.

Q. And the elevator is so arranged it can handle

the grain from boat to elevator and to car, is that correct?

A. Yes. I have seen them loaded in bulk at Cairo, Illinois, twenty years ago, at the big elevator there, the boats lined up against it.

Q. Do railroads run to the river brink at Paducah?

A. Yes sir.

Q. Are there any handling facilities at Paducah on the river and rail?

A. Yes sir, from boat and the rail.

Q. At Evansville?

A. Yes sir.

Q. Do the rails go to the river?

A. Have an incline road to the river.

Q. The railroads at Nashville run to the river brink?

A. Yes sir, right to the brink of the river; line the boats up alongside the cars.

Q. How many trips can these packet boats make now; just take packet boats; how many trips can one boat make between Nashville and Paducah a week?

A. The steamer Nashville made two trips a week the last season, between Nashville and Paducah.

Q. How long does it take the packet boat to make a trip between Nashville and Cairo?

A. Well, she will make about a trip and a half a week. It is about fifty miles further to Cairo than to Paducah from Nashville.

MR. MCCONNICO: About a trip and a half a week.

Q. In the estimate that you have made of the moving of grain by modern facilities and tows, you have contemplated going from the Ohio River crossing with one haul into Nashville?

A. Yes sir.

Q. I want to get some river distances from you, if you please, sir. How far is it in miles from Nashville to Paducah?

MR. NEEDHAM: By water?

MR. MCCONNICO: By water.

A. Two hundred and twelve miles.

Q. To Evansville?

A. From Nashville it is 196½ miles to the mouth of the Cumberland River, and we add twelve miles to that,—334 from Nashville to Evansville; 334 miles from Nashville to Evansville.

Q. How far from Nashville to St. Louis by boat?

A. Let me see; 462 miles.

Q. How far from Nashville to Cairo by boat?

A. 262.

Q. How far from Nashville to Memphis by boat?

A. 462, with the same distance from Nashville to St. Louis as from Nashville to Memphis.

Q. How far from Nashville, Tennessee, to Pittsburg, Pennsylvania, by boat?

A. Let us see; 1184 miles from Pittsburg to Nashville.

Q. How far from Nashville to New Orleans by boat?

A. 1262 miles.

Q. Captain, how long have you been familiar with the steamboat traffic at Nashville, and observe the extent of it?

A. Forty-two years, if I live to the fifth of next December, that I have been.

Q. About what date will indicate your beginning of knowledge of the steamboat situation at Nashville?

A. 1869; I was just thirteen years of age then.

Q. At that time state something with respect to the importance of the steamboat traffic at Nashville.

A. Well I just could not hardly describe it. Both wharves—we had two wharves—the upper wharf and the lower wharf, and the blockade was so great the boats had to land at both wharves, and I have seen them standing out six or seven deep.

Q. Do you know at what time the rail lines undertook to protect a through rail rate at Nashville from the Ohio River into the southeast by this reshipping

practice, at what time the rail line began to compete with the boats for the through business?

A. Let me see; it was along I think in the early 70's, when the Chattanooga road had put an elevator at Hickman, Kentucky.

Q. Assume that date to be 1872, Captain, I will ask you how the handling of grain into Nashville by boat since 1872 has compared with it prior to that time.

A. Well, it has fallen off wonderfully, on account of railroad competition.

Q. Prior to 1872, to what extent would you see grain blocked and congested?

A. It was blocked all the time from one end of the wharves to the other. The Chattanooga road could not take care of it. I have seen the streets blocked even. They would haul it over to the depot. The facilities were not sufficient to handle it then. I have seen that situation there in my young days.

Q. The steamboat business there now so far as handling grain and other things is very much less than it was?

A. Decidedly so sir.

Q. Can you recall when there were through packet lines that regularly ran between Nashville and Pittsburg and Nashville and New Orleans and intermediate points?

A. Yes sir, as late as—well, now, just at the conclusion of the war, I can remember very well; in fact the matter is called to my mind. My father was on a boat that lost ninety lives. That was along I think about 1867 or 1868, a couple of years after the war. We had a packet line from Pittsburg to Nashville. After the war, along in the early 70's we had a packet line from Pittsburg to Nashville, and a line from Cincinnati to Nashville, from Louisville to Nashville, from Evansville to Nashville, from Cairo to Nashville, and from St. Louis to Nashville.

Q. And would you also transfer to Mississippi River steamers at Cairo for New Orleans?

A. Yes sir; we had a connection at Cairo, with the St. Louis and New Orleans packet companies.

Cross-examination.

MR. ESTERLINE: Captain Gallagher, referring to the one to two million bushels of grain which you say moved annually, what—and also you referred to the heavy grain season—what particular months of the year is that heavy grain season in which that grain moved—the bulk of it?

A. December, January, February, March, April and May.

Q. Now, these boats to which you have referred are the old boats, are they not, that have been on the river for a good while?

A. There are two new ones—the Nashville and the Robert Rhea.

Q. How old?

A. The Robert Rhea is three years and the Nashville two years old.

Q. Were they put on to displace some other boats?

A. No sir, a new company.

Q. A new company?

A. Yes sir; I used to be with the old line, and am now identified with the new line.

Q. You say that the business has largely fallen off from the old days twenty-five or thirty years ago?

A. Yes sir; after they got these railroad crossings and reshipping; I do not know much about that.

Q. You do not anticipate, do you, Captain Gallagher, that these conditions will be restored very soon, so you will have the old business back?

A. No, it does not look that way, the way the railroads fight us.

Q. And the business you have has been such as you could have by getting it from the railroads, by meeting in competition with the railroads?

A. Yes sir.

Q. And you are not figuring now on building any modern barges of up to date steel construction, or anything of that kind at large outlay or expense?

A. That would be possible, if business were concentrated at these Ohio River crossings. Steamboat people would not want to get into such a thing without assurance of some permanency. It is feasible and practicable and possible, too, in my judgment, and my judgment is better than any man living now at Nashville.

Q. But no preparations are being made at this time to handle from fifteen to twenty million bushels of grain by boat at two cents a hundred down that river?

A. Not just now, no sir; there have been some estimates made on it. A grain man asked me to estimate what I thought would be possible.

Q. But no steps have been taken?

A. Not as yet; no sir.

Q. And such a course on the part of these two lines or any other you say would involve a very large outlay of money?

A. Yes sir.

Q. And you have not made any definite plans; you are not—you have not any assurance that you would get that business in that quantity or any part of it?

A. No sir.

Q. Nothing of that kind?

A. No sir.

Q. Do the railroad companies have any influence in these two companies?

A. Not a dollar. The company that I represent, we have no connections with other steamboat companies or railroad lines; we are—

Q. You are independent?

A. Independent, absolutely; no rates in connection even with other steamboat lines. We construct a rate on inquiry, and work on combination.

Q. The business that you have been handling has

been about the same in the years past; no great fluctuation up and down; steady business?

A. Pretty steady; yes.

Q. Pretty steady; and so far as you know or plan it will go on about as it has been?

A. Yes sir, if the rates are about the same as they are now. If the roads should put in an arbitrary rate from the crossing on the Ohio and Mississippi, the steamboat interests at Nashville would take cognizance, or some other steamboat interests would.

Q. You take cognizance of anything the railroad company does which gives you an advantage?

A. Yes sir.

Q. The railroad company takes cognizance of anything you do which takes business from them?

A. Yes.

Q. There has been nothing overlooked in that regard?

A. No sir; not on either side.

MR. MCCONNICO: Captain Gallagher, grain that formerly came into Nashville by steamboat from the Ohio, Wabash and Mississippi River valleys, is that grain to any extent now by steamboat concentrated at Ohio River crossing points?

A. Yes sir. That I know—at more than one place.

MR. MCCONNICO: This is what I mean—

CAPTAIN GALLAGHER: Go ahead and tell me what you mean.

MR. MCCONNICO: You have described how, prior to 1872, the quantity of grain coming into Nashville was very much larger than now.

A. Yes sir; decidedly so.

Q. Now that grain that came into Nashville prior to 1872 I understand you to say was coming from the Wabash, Ohio, Mississippi, and lower Cumberland valleys,—all rich grain producing countries?

A. Yes sir.

Q. Now not so much grain comes in from the lower country?

A. No sir.

Q. My question is, does grain that formerly came into Nashville by steamboat, now come from those river valleys by boat or rail up to Ohio River crossing points and move by rail from there out to the southeast?

A. Yes sir.

Q. Such grain then originates as a rail line shipment at the Ohio River?

A. Yes sir.

MR. WYMBISH: Captain, how did your tonnage of grain last year compare with former years?

A. Why, let me see: in a public report—the Government Engineers' report is not out for 1910—it was over a million, five hundred thousand bushels for 1910. The report is not yet officially published, but was published a few days ago in the Nashville papers and verified by the engineer in charge.

Q. How did that compare with the preceding year?

A. It was greater; the crop was better.

Q. What did you carry in 1909?

A. I do not remember now, sir; let us see; 1908 was rather a light year; we had a million and fifty or sixty thousand bushels on our record that year; do not remember 1909.

Q. Was it more or less than 1908?

A. I think it was more.

Q. You are sure it was as much?

A. It is my judgment.

Q. And you are sure that in 1908 the tonnage exceeded one million bushels?

A. About a million and fifty thousand bushels, or something like that.

MR. WYMBISH: I call your attention to the Government report for the year 1910, that is published in 1910 for 1909, showing the tonnage to have been on the Cumberland River below Nashville, Tennessee, from January the first to December 31st, 1909, 659,834 bushels, or 19,575 short tons.

MR. MCCONNICO: That is on the lower Cumberland?

A. Yes sir.

CAPT. GALLAGHER: Let me say the report we get is given from July to July. Wherever that comes from—our engineer at Nashville,—under the law we have to make a report for the year, and in addition to that a report is made passing through locks; every lock keeper takes a report. You state from December first until when?

MR. WIMBISH: From January first to December 31st,—the whole year, Captain.

CAPTAIN GALLAGHER: The first of January—a good deal of grain comes in from the north.

JUDGE MACK: But, Captain, he is taking a full calendar year, January 1 to December 31, 1909.

CAPTAIN GALLAGHER: I did not know what 1909 was, but it appeared to me to be equal to 1908.

MR. WIMBISH: How did the entire tonnage of 1909 compare with 1908?

A. I do not know; have not seen the report.

Q. Do you know approximately the average tonnage on the Cumberland River below Nashville?

A. I do not.

Q. Has it ever exceeded three hundred thousand?

CAPTAIN GALLAGHER: Three hundred thousand what?

MR. WIMBISH: Tons—short tons—the total tonnage.

A. Really, I could not tell you that, sir.

Q. Captain, I have before me a report showing the comparative statement of total tonnage for eight years. The highest is for 1907, being three hundred thousand tons, while the lowest is 1909, being one hundred ninety-three thousand, the average appearing to be somewhere about two hundred fifty thousand; I have not figured it out exactly.

A. I never have seen one of those reports prepared like that.

Q. You will accept these as correct?

A. Oh, if the Government prepared them.

Q. What was the season of 1909?

A. In 1909 I do not remember that; 1910—I think we had—

Q. How about 1909?

A. I looked more particularly into 1910. Never noticed that.

MR. MCCONNICO: That is in type and had not been published when I left; and I see it has been published to some extent in the newspapers since leaving there.

MR. WIMBISH: I am asking now as to 1909.

CAPTAIN GALLAGHER: I can not remember.

MR. WIMBISH: The statement in the Government report is the Cumberland River below Nashville, Tennessee, season of navigation, 1909, open at beginning of year, closed July 31, reopened November 26; does that correspond with your recollection?

A. That is about right; in my judgment they did not commence operations until about the first of January, being a late season.

Q. What is the draft of these boats belonging to these two packet lines?

CAPTAIN GALLAGHER: Light or loaded?

MR. WIMBISH: Both.

A. Well, they vary from seventeen inches to two and one-half feet, a little less; about twenty-eight inches in the heaviest boat we have.

Q. And seventeen inches is the lightest draft, light? What would the draft be loaded?

A. About four and one-half feet; the seventeen-inch boat loaded about four and one-half feet.

Q. Loaded?

A. Yes sir.

Q. What would the boat having an unloaded draft of twenty-eight inches be loaded?

A. Six and one-half feet.

Q. Captain, see if this corresponds with your experience and knowledge. You have been on the river for a number of years. I am reading from the report of the Chief Engineer of the United States Army, 1910, last report, covers 1909, page 661:

"The Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in the year. For boats not drawing over three feet, from six to eight months, and for boats drawing sixteen inches or less, the whole year. General navigation, however, is practically closed for several months each year during low water. As a general rule, when the stage is below two and one-half feet, navigation is closed; between two and one-half feet and five feet it is uncertain; and above five feet it is good."

Does that correspond with your knowledge?

A. About five feet is good navigation. Four feet is good navigation, but he is a very poor man that put up that report. Very rarely we fail to navigate less than seven or eight to eleven months. Whoever wrote that is way off.

Q. Then this is a mistake?

A. To a certain extent.

Q. Boats not drawing over three feet, the statement is, the navigation is open from six to eight months?

A. That is easy.

JUDGE MACK: You mean it is correct in being limited to six to eight months or surely six to eight months?

A. Yes: it is surely six to eight months.

MR. WIMBISH: Of this grain hauled into Nashville by river,—lower river, what percentage would you say is corn?

A. Fully ninety per cent of it.

Q. What percentage would you say is wheat?

A. About seven. Just now we are not handling so much wheat.

Q. The least amount would be what? Oats?

A. Oats? We do not handle much oats now; the railroads get that; we handle principally corn, fully ninety per cent, and possibly a little more.

Q. Where is this corn grown?

A. Along the Ohio River, the Wabash valley, there, and up the Wabash River principally with us. We often make extra trips to the Mississippi River in and around the vicinity of Wolf Island, below Cairo.

Q. What percentage of the grain that you move into Nashville is grown and received south of Paducah or on the Cumberland River proper?

A. That would be northeast of Paducah; Paducah is in the west.

MR. WIMBISH: I mean towards Nashville.

A. Well, out of the ninety per cent, seventy would come from the Ohio, Mississippi and Wabash Rivers.

Q. How much from each one? From the Cumberland?

A. About fifteen per cent.

Q. How much would you say from the Wabash Valley?

A. Well, now, I never figured on that just exactly. The Wabash River with us is not permanently on our line; just occasionally we make trips. That is brought out by tows. We have tow boats and barges that go into the Wabash River. When we can get nothing on the Ohio River we go up the Wabash River for it, but our grain route is from Evansville up to Nashville by Paducah. Out of the ninety per cent of grain we get, I judge sixty-five per cent of it will come off the Ohio River between Evansville and Cairo and Paducah, on the Ohio River.

Q. And that leaves what for the Mississippi?

A. About thirty-five per cent; Mississippi and Cumberland?

Q. Have you not joint rates with the railroads?

A. Not one, sir.

MR. WIMBISH: I am not speaking of interest.

A. No sir; not a joint rate or tariff published with any line.

Q. Then I could not ship to Nashville from an interior or western point on your boat to Nashville?

A. I do not know about that, sir, about the arrangements made at Cairo for connection.

Q. You do not participate in business that originates beyond the river?

A. If offered to us we would.

Q. In fact, though?

A. Yes, in the past we have done that, but we do not now; it is not offered to us, which is probably the reason we do not handle it.

Q. If you can handle this traffic from Ohio River crossings into Nashville, making all your stops and zigzagging across the river, for six cents a hundred, and can carry that tonnage under the most favorable conditions named by Mr. McConnico, at two cents, why do you not get the tonnage?

A. I did not say that.

Q. No, no; under the most favorable conditions?

A. Because it is not offered to us.

Q. Why not?

A. I do not know; the railroads handle it.

Q. Is it in your judgment because the railroads afford a superior and more efficient service?

A. Just now they do, sir.

Q. So that notwithstanding your lower rate and the fact that you could offer a much lower rate—if you got the tonnage; the fact is, it is not offered?

A. No sir; not with our present equipment, but if we would equip ourselves; if we had the assurance this tonnage would be offered us for some years, it would be profitable for us to construct barges and boats and go into it. We could not handle grain on a boat that zigzags at two cents per hundred.

Q. At six cents?

A. No, nor at six cents. The question was asked me if all the grain was offered us at the Ohio River crossings and we had a straight trip what would be the rate. I said it would be profitable at six cents.

Mr. McConnico: On packet boat from one point, straight haul into Nashville and no landings to make at six cents?

A. Yes, six cents a hundred.

MR. WIMBISH: You stated that the rate averaged from five cents per bag to nine cents per hundred.

A. I said in my experience the rate had so varied.

MR. WIMBISH: Five cents a bag is less than five cents per hundred pounds.

CAPTAIN GALLAGHER: I appreciate that, sir.

Q. What has the average been?

A. Eight cents a hundred.

Q. Eight cents?

A. Yes sir.

Q. So that as the conditions now are? You mean is it as much as that now?

A. Yes sir, it is nine now, from the fact that the railroads—we get nine cents on these packet boats, making landing after landing, and we have more shipments of grain offered us on these packet boats than we can accept.

Q. Is it not the fact that you have no competitive business offered you at all where the railroads can carry it? Your tonnage is confined to the grain locally grown along the streams that you ply; your trade varies according to the exigencies of your trade, and has no direct relation to the rail rate at all?

A. Yes sir; let me answer that. There are competitors with us on the Ohio River, below Henderson on the Ohio River. At Henderson one company carries millions of bushels of grain in competition with our packets every year from along the Wabash and Ohio Rivers, and the Nashville and Chattanooga railroad in connection with Ohio River boats which land grain at Paducah, Kentucky, and Johnsonville, Tenn., is in competition with our boats. We have competition all around and that is the reason we are not allied with any steamboat or railroad line.

Q. Captain, if rebilling is not abolished at Nashville, and if it would have the effect that is testified to here, of diverting the traffic largely to the boat lines, would it not be to your interest to have it abolished?

A. Possibly, if we can get the business and be sure of it.

Q. If abolished, why not get it?

A. We could get it, but there is just this probability about that. That if we started in to equip ourselves the railroads might meet us and put us out of business. We would not want to invest largely for shippers will go back to the railroad if they put the rates on an equality.

Q. Why?

A. I do not know, sir; they have done it not only on grain but on everything else.

Q. Do I understand you that you do not put on superior equipment for the purpose of handling this grain only because you fear that the railroads would destroy you?

A. Yes sir; unless we had some guaranty from the shippers and buyers they would give us the business for certain periods so as to indemnify us.

Q. Do you think that even if you had the facilities you would get any appreciable amount of grain beyond what you are now getting, grown along the rivers, and if so, why?

A. Why, the rate in itself would draw the grain to the river.

Q. The grain must be sacked?

A. Not necessarily so, if you had elevators and proper equipment. It could go in the barges the same as in cars.

Q. Do you think the grain would be protected in the hold of a boat in bulk?

A. Yes sir, equally so as in car and better.

Q. Be better ventilated?

A. Yes sir.

Q. You do not now do that?

A. Not now.

Q. Have you ever done it?

A. I did not do it, but the Mississippi Valley Transportation Company did so from St. Louis to

New Orleans until the Gould system of railroads broke it up, and in bulk too.

Q. But you never saw much on the Cumberland River?

A. No, it never was necessary for us to do it.

Q. Is there any water line of transportation from Louisville to Nashville?

A. Not through. We have connection—the Louisville and Cincinnati and Louisville and Evansville Company. There are two big side-wheel boats and two smaller boats, daily line out of Louisville and daily line out of Evansville.

Q. Are there any through rates from Cincinnati to Nashville by water?

A. No sir, not now.

Q. What is the rate? I do not suppose any grain is ever moved that way.

A. We have no rates on grain from Cincinnati and Louisville; not at all.

Q. Now if grain could move that way, taking a relative basis, what ought to be the rate from Louisville to Nashville by water, if six cents is a just and fair rate from Cairo? About how much more would it be to Louisville?

CAPTAIN GALLAGHER: In connection with what, Mr. Wimbish?

MR. WIMBISH: With the line of boats running through.

A. It would be fourteen cents from Louisville under the same conditions.

Q. What would it be from Cincinnati?

A. Well, it would take twenty cents from Cincinnati. No grain originates at those points going by river from Louisville or Cincinnati.

Q. Captain, when does this grain that you haul ripen? When is wheat harvest in the Cumberland and Ohio Valleys?

A. Well, along in early summer it is spring-stored frequently and held till spring; we do not handle much wheat now.

Q. But in the fields the harvest is in June and July?

A. Yes, but it is stored.

Q. When does the corn ripen?

A. As soon as the frost falls and a little bit before, if it is dry weather. I have just spent the summer and fall on the Ohio River, and saw a corn crop there, but it is late this year, damp.

Q. On the average what is the season when corn ripens?

A. About the first of December or the latter part of November.

Q. Don't you have frost before that?

A. Sometimes.

Q. On an average?

A. I do not know; I am not much of a weather prophet; I do not pay much attention to it; we handle corn about the fifteenth of November, and from then along up until May and June.

Q. You are familiar with all boats on the Cumberland River; what boats are those standing on the wharf in Colonal Stahlman's exhibit No. 3?

A. The Calhoone.

Q. What line does she belong to?

A. That is the line Mr. Kelly has charge of.

Q. Not a regular boat?

A. That is a chartered boat. (Witness consults photograph.)

CAPTAIN GALLAGHER: The J. B. Richardson.

Q. What line does she belong to?

A. The Ryman Line.

Q. What is the next one?

A. The R. Dunbar.

Q. What does she belong to?

A. The Rymon Line. (Witness consults photograph.)

CAPTAIN GALLAGHER: The Henrietta.

Q. What does she belong to?

A. An independent line.

Q. That boat did not go to the Ohio River?

A. No, she was independent.

Q. What is the next?

A. Lotus Sims; runs from St. Louis to the grain merchants at Nashville. She made one trip.

Q. What is the last one?

A. An excursion boat making a ten-day trip.

Q. Out of these seven boats two were running special to St. Louis?

A. Oh no; yes two.

Q. To meet an emergency when there was a blockade on the rail lines so they could not get cars?

A. I do not know about that.

Q. Then there are two others; one other an independent boat that does not reach the Ohio River and another is an excursion boat that simply called by; only two regular boats there in that photograph?

A. Yes.

MR. McCONNICO: Captain, is it an unusual scene on the wharf at Nashville for five or six steamboats to be there?

A. No sir.

MR. McCONNICO: I call attention of counsel to the fact that—take for instance the government report for the year 1909, on page 1679, there appears a list of thirty-four steamboats navigating on the lower Cumberland. Is that list excessive?

A. No sir; that is according to the United States Engineer's report and each boat has to report.

MR. McCONNICO: I have on this piece of paper I have torn from a copy of that report, that list of steamboats in the report of Major Hart's for the year running from January 1st to December 31st, 1908; list of stern-wheel steamboats plying on the Cumberland River below Nashville, for the calendar year 1908. I will ask to have that copied in the record at this time.

JUDGE MACK: Why encumber the record with the list of the names? If there are thirty-four of them, there are thirty-four; they will not dispute that.

MR. McCONNICO: I wanted to get into the record the length, breadth and tonnage.

JUDGE MACK: What is the difference?

MR. McCONNICO: I had the total tonnage of two regular packet lines.

JUDGE MACK: If you just state the total tonnage, foot up the tonnage and put that in.

MR. ESTERLINE: Are those passenger boats?

MR. McCONNICO: I suppose most of them were passenger and freight packet boats; most boats that carry passengers carry freight.

CAPTAIN GALLAGHER: There are many tow boats there; the tow boats carry no passengers, simply freight.

MR. McCONNICO: Mr. Wimbish read from page 661 of the report of the Chief Engineer with respect to the lower Cumberland. I will read from that same page, and I will ask you if this is in harmony with your recollection. At this place, page 661 of the report the expenditures made by the Government on the river are referred to, and the report as previously, on page 661 set out the large amount of money that the Government has expended on the lower Cumberland, calling attention to the fact that by the act of June 25, 1911, alone $213,000 was appropriated, and that the same act authorized contracts to the additional amount of $450,000 for the lower Cumberland alone were made. Then the report states on this same page this that I want to specifically call your attention to:

"These expenditures have resulted in the periodical removal of snags and other surface obstructions from the navigable channel, the protection of the bank of a part of Cumberland Island in Kentucky Chute at the mouth of the river, and the completion and placing in operation of Lock A, November 26, 1904, whereby 6-foot navigation has been afforded all year round for a distance of 38.8 miles above the lock. The season of profitable navigation from the Ohio River to Nashville has been prolonged by forty-five to ninety days, depending on the stage of water, making it now average eight months annually. Lock A is 41.4 miles below Nashville."

Annual Report of the Chief of Engineers, 1910, Appendix B B, p. 661.

—Captain Gallagher do you concur in what I have read?

CAPTAIN GALLAGHER: That is about right.

MR. MCCONNICO: I will refer counsel to the report of the Government Engineer at Nashville for last year, which may not yet have been published, or if it has it has only recently been published; but this official report, of the same kind that has been heretofore referred to, contains a statement of "Commercial Statistics" for "Cumberland River below Nashville, Tennessee, from January 1st to December 31st, 1910." Under this head this report shows that the season of navigation upon the Cumberland River opened at the beginning of the year 1910 and closed October 31st, and re-opened again December 1st. Was that river open eleven months last year, Captain?

A. Yes sir, eleven months.

Q. In 1910 that was?

A. Yes sir.

Q. The commercial statistics that are in this last report for 1910, above referred to show, Captain, coming in from the lower Cumberland alone 1,510,719 bushels of grain, or 42,207 short tons, of a value of $1,039,485. Is that in harmony with your recollection of the past season?

A. Yes sir, the Engineer's Office told me that too; I inquired about that—the total.

Q. I see this report mentions many other things that came in last year on the lower Cumberland, various commodities for which it gives a quantum. The commodities mentioned are lumber, logs, railroad ties, other timber products, sand, gravel, other building material, grain, live stock large, live stock small, tobacco, other farm products, and also miscellaneous, and also general merchandise, making a general amount, a gross amount in short tons, for last year on the lower Cumberland that came in by

steamboat 327,757 short tons of all sorts and all things, of a gross valuation of $6,692,589. Is that excessive or not?

MR. ESTERLINE: Oh, your Honor, I do not think the witness should answer; that is unreasonable.

MR. MCCONNICO: Does that impress you as being unreasonable for the river to do?

A. No sir.

MR. ESTERLINE: You say the Government report has not been issued officially; that testimony should be taken subject to exception.

JUDGE MACK: Certainly.

MR. MCCONNICO: If you find one figure incorrect, strike the whole thing out.

MR. ESTERLINE: The engineer may change it himself.

MR. MCCONNICO: It has been sent to the War Department and is probably in print here now.

CAPTAIN GALLAGHER: They print it here and they said that is final—we get them every year.

MR. MCCONNICO: And the office told me they had, locally, at Nashville, already corrected the proof from the government printing office.

MR. ESTERLINE: We will take it subject to that.

MR. MCCONNICO: Captain, you told Mr. Wimbish that if a rate of six cents was right from Cairo, a rate of about fourteen cents would be right from Louisville. Were you talking about a through rate from Louisville or combination rate?

A. As you suggested, statistics—two hundred miles further from Louisville to Evansville and would take fourteen cent rate.

Q. Packet boat rates?

A. Yes; on a straight trip.

Q. Here is what I want. I want to call your attention—How far is Cairo from Nashville?

A. 262 miles.

Q. How far is Louisville from Nashville?

A. 534 miles.

Q. Well, then, Cairo is more than half way to Louisville?

A. Oh, Cairo is down at the mouth of the Ohio River.

Q. I mean in point of distance.

A. Yes, or a little more than half way.

Q. Louisville is not twice as far away as Cairo?

A. No sir.

Q. Then you fix a six cent rate from Cairo to Nashville and a fourteen cent rate from Louisville to Nashville; now my question was, are you talking about packet boat rates or not?

A. Well, let us see; two hundred miles—four hundred miles extra—I spoke of handling at six cents on packet boats. It never occurred to me to make a rate from Louisville because we never handle grain there.

Q. Now, if you went to Louisville and got it there, you would have the same loading to do and a straight haul from Louisville to Nashville, would you not?

A. Yes sir.

Q. Would the rate be more than double the rate from Cairo?

A. We would not care to go to Louisville; and I do not believe they have any facilities at Louisville.

Q. The answer you gave to Mr. Wimbish—The six and fourteen cent business, does that have any relation in your mind, or meaning, or significance, with respect to the two cent rate that you said could be profitably maintained by handling this grain in modern barges, tow boats and equipment from the Ohio River crossings up to Nashville?

CAPTAIN GALLAGHER: In what?

Q. The figures that you gave Mr. Wimbish, six and fourteen cents, and relative figures were packet boat figures?

A. Yes sir.

Q. Those figures have no significance on the question of how it could be done with modern equipment?

A. I explained that to Mr. Wimbish.

Q. I see on page 62 of the report of the government engineer—of the Chief Engineer of the United

States Army, of the department at Washington, this sentence—

MR. NEEDHAM: What year is that?

MR. MCCONNICO: This is for the year 1909; it is published in 1910 for the preceding year. It says "There is little doubt that the competition offered by the Cumberland River, even in its present condition is the cause of the favorable rates into Nashville." Does that agree with—

MR. WIMBISH: I object to that; that is expression of an opinion on the part of a War Department officer.

MR. MCCONNICO: Well, if counsel objects—

JUDGE MACK: Sustained.

MR. MCCONNICO: All right; that is all.

MR. WIMBISH: I want to ask as to the season of navigation this year.

A. It is very favorable.

Q. When did it close?

CAPTAIN GALLAGHER: You mean 1911?

Q. When did it close?

A. Let us see; we had a boat running every day in August, commenced just before the first of the year, and run up into August, and then commenced again in September; very favorable this year.

Q. You did not have a very dry summer?

A. No, it looks very favorable for 1911. Boats are commencing to run now. I think we will have ten months of navigation this year. They are running both on the upper Cumberland and lower Cumberland too.

Further this deponent saith not.

JOHN H. BELL.

(The witness, John H. Bell, was sworn by Judge Mack.)

MR. MCCONNICO: Mr. Bell, what is your business?

A. I am a grain dealer.

Q. Where?

A. At Nashville, Tennessee.

Q. How long have you been in that business at Nashville?

A. About eleven or twelve years.

Q. Have you been for that time familiar with the moving and handling of grain at Nashville by river and rail?

A. I have by rail and to some extent by river.

Q. Mr. Bell, how do the handling facilities at Nashville that have located themselves there—we will take first the drying facilities to save the grain—compare with those at the Ohio River crossing points?

A. We have larger drying facilities at Nashville than they have at any of the Ohio River points, and I believe larger than all of them combined, at Nashville.

Q. Do you know of any Ohio River crossing point except the two mentioned by Mr. Kelly that has any drying facilities at all?

A. I do not.

Q. How about Nashville's sacking facilities?

A. I am reasonably sure that we have the largest sacking facilities of any market in the world.

Q. I will ask you, Mr. Bell, if you have personally compiled some statistics showing the names of the grain dealers or firms at Nashville, the capacity of their warehouses, the value of their warehouses, the capacity of the sacking facilities, the volume of business in bushels and dollars, etc., for the year ending July 1, 1911.

A. I have.

Q. I will hand you this and ask you if that is the statement and compilation that you prepared?

A. Yes sir, it is.

Q. Is that correct?

A. It is.

Q. I will ask you to file that as your exhibit No. 1.

MR. ESTERLINE: That is objected to, your Honor. We had that matter up this morning, the value of the

business, sacking capacity and amount of money invested.

JUDGE MACK: I do not see the necessity of it.

MR. MCCONNICO: I understand your Honor did not want us to go into the amount of damages, but it so happens that this compilation on the same page has got the amount of damages, with the capacity of the warehouses and drying facilities, and those matters we offer on the point of Nashville's being a concentration point for grain along the line that we inquired this morning.

MR. ESTERLINE: They have the amounts invested running up into the millions—hundreds of millions there; it is a mere estimate.

JUDGE MACK: The investment part may be stricken out and the rest may be admitted.

MR. ESTERLINE: Your Honor has not seen this.

JUDGE MACK: If you put this in they would have a right in defense to go into an entire examination of this question. It might take up hours.

MR. ESTERLINE: It should all be stricken out except that part as to sacking facilities.

MR. MCCONNICO: These were matters on which there was no conflict before the Commission; counsel are objecting to matters that were without dispute before the Commission.

JUDGE MACK: If they do have objection, I have; otherwise I have none.

MR. MCCONNICO: Aside from the question of quantum of damage, surely the volume of business done at a place—

JUDGE MACK: I have stated you can give that.

MR. MCCONNICO: I have got that volume in bushels and dollars.

JUDGE MACK: I do not see the need of theorizing on it. The witness' compilation states that the volume of business in Nashville in the year 1909 was nearly thirty-seven million bushels, representing in value twenty-three million dollars, and that the sacking facilities had a capacity—that the sacking facilities

were 252,000 bushels per day; that they have elevators with a capacity of 3,632,500 bushels.

MR. NEEDHAM: 622 it is here. Oh, yes, 32 is right.

JUDGE MACK: That covers the whole thing.

MR. MCCONNICO: And the volume of business in bushels.

JUDGE MACK: I stated that first, 36,913,000.

JUDGE MACK: The entire storage capacity then is 3,632,500; the mills had an average business of nearly five million bushels per annum; the volume of business in 1909 was nearly six million dollars.

MR. MCCONNICO: For the mills alone.

JUDGE MACK: For the mills; they have a capacity of 5,500 barrels of flour per day.

MR. ESTERLINE: That of course goes in subject to the general objection heretofore made.

MR. MCCONNICO: Instead of asking you to file this exhibit, his Honor has stated the aggregate quantities that your written compilation undertook to set forth in detail. Is that correct?

A. That is correct.

MR. MCCONNICO: Those aggregates are all we want.

JUDGE MACK: Yes.

MR. MCCONNICO: I want to ask Mr. Bell with reference to—

MR. NEEDHAM: What time does this represent?

JUDGE MACK: The calendar year 1909; that is the paper you showed me.

MR. MCCONNICO: I will ask if you have made a similar compilation for the year ending July 1, 1911?

MR. NEEDHAM: Will you not give us the year for which this is intended?

MR. MCCONNICO: For the calendar year ending July 1, 1909, was what the Court stated the substance of. Now a similar statement—

JUDGE MACK: For the year ending July 1, 1911?

MR. MCCONNICO: For the year ending July 1, 1911, state what your compilation shows, Mr. Bell; and only in aggregate.

A. The aggregate storage capacity—

MR. MCCONNICO: Storage capacity of the warehouses, and elevators at Nashville?

A. Capacity in bushels, warehouses and elevators, 4,062,500 bushels. Sacking facilities, capacity in bushels per day, 232,000 bushels. The volume of business for the year ending July 1, 1911, in bushels, 28,901,734 bushels. The volume in dollars, $16,426,353.

MR. MCCONNICO: Now the aggregates with respect to the mills?

A. With respect to the mills, the capacity per day, flour in barrels, 8,400 barrels, which includes the capacity of the flour companies who are blenders of flour, but it is flour that is reshipped or rebilled or is sent forward on milling in transit rates. The average business per annum in bushels of the mills, 5,125,000 bushels. The volume of business for the mills year ending July 1, 1911, in dollars and cents, $7,591,153.

JUDGE MACK: Suspend here until two o'clock.

(Mr. Bell resumed the witness stand.)

MR. MCCONNICO: Mr. Bell, what has been the rate charged by packet boats, taking up grain and making the landings, for bringing grain into Nashville by sack in the past?

MR. WIMBISH: Is not that cumulative? Has not the Captain testified along that line? There will be no dispute.

JUDGE MACK: That is enough, then.

MR. MCCONNICO: I want to ask you this question: Mr. Bell, have you undertaken to make any investigation and estimates recently to ascertain what grain could be brought from Ohio River crossings, like Evansville, Paducah and Cairo, with model barges and modern equipment, in bulk, and with the usual well-known devices for handling and rehandling from boat to car or from boat to elevator—at what rate that grain could be brought from those river crossings up to Nashville at reasonable profit?

MR. WIMBISH: I object, as this witness has not qualified as a river or traffic expert.

JUDGE MACK: That is true.

MR. McCONNICO: Yes, the witness said he had been in the grain business for ten years at Nashville, familiar with grain traffic over river and rail, and my question now was going to his qualification. I asked him if he had made any investigation recently to ascertain what this could be done for.

JUDGE MACK: Ask whether he has made the investigations or not. Let us find out what investigations he has made. He may have qualified himself.

A. I have made investigations and it could be brought in for two cents per hundred at a profit.

JUDGE MACK: Well, now, wait; the question is, have you made investigation? Strike out the rest of the answer.

MR. McCONNICO: Have you made investigation as to the cost of equipment of tow boats and model barges?

A. I have.

Q. Have you made investigations as to the cost of operating the tow boats and the barges?

A. I have.

Q. Have you made investigations, and do you know the cost of transferring the grain in bulk from elevator to car or from boat to car with modern appliances?

A. I know; yes.

Q. Do you know the insurance rate?

A. I do.

Q. Have you investigated the insurance rate on the modern equipment?

A. I have.

Q. Are you acquainted, therefore, with modern methods, and the cost of modern methods for handling grain with the model barges and tow boats, and modern equipment for handling it from boat to cars?

A. I am.

Q. Have you investigated and are you acquainted

with rates at which grain is moved in bulk at other places with modern equipment?

A. I have.

MR. MCCONNICO: I submit, may it please your Honor—

JUDGE MACK: Did you do this for the purpose of qualifying in this case or to establish a line for such transportation?

A. Well, I did it for the purpose of knowing what it could be done for, and whatever the ultimate use I might make of the knowledge, it was principally for this case, of course.

JUDGE MACK: When did you make these investigations?

A. Recently.

JUDGE MACK: What investigation did you make? What did you do?

A. Why, I ascertained from parties who were conversant with the cost of appliances, and then figured out what the cost of the different items would be, and figured what would be necessary to handle the traffic the expense of handling, and added up the different items of that expense, and made my computation.

MR. MCCONNICO: Did you know, to start with, Mr. Bell, the expenses of handling grain with modern equipment from boats to car?

A. Yes, I know of my own knowledge what that would be.

Q. And you ascertained from your investigation the cost of boats and barges, and operating these tow boats and barges?

A. That is correct.

Q. And knowing the cost of handling with modern equipment from boat to car and from boat to elevator, and knowing insurance rates—with that knowledge, and your ascertained knowledge as to the cost of equipment and operating, you say that you can express an accurate opinion as to the cost at which this can be done as of now?

A. I certainly can.

JUDGE MACK: I will let it go in for what it is worth.

MR. McCONNICO: Now, Mr. Bell, with modern equipment and with the usual, well-known labor saving devices for handling it, and handling the grain in model barges and with tow boats, for what can that grain be moved from Cairo, Evansville or Paducah up to Nashville, including insurance and the cost of handling from boat to car or from boat to elevator?

A. It can be handled for two cents per hundred pounds or less.

Q. I will ask you if in arriving at that conclusion you know that it has been handled with a packet boat and a barge in sacks from St. Louis up to Nashville at three and one-third cents per hundred pounds, handling it by hand in sacks; do you know as a matter of local history that that was done?

A. I do.

Q. How much further away from Nashville is St. Louis than Evansville, by water, if you know?

A. I could not give the exact figures; I know that it is about in the neighborhood of twice as far, but I do not know the mileage by river.

Q. In addition then to having investigated as to the cost and maintenance of the tow boats and barge equipment, and the cost of operating the same you know the way it has come into Nashville with the other equipment from St. Louis?

A. That is right.

Q. And you know that, as I understand you in the beginning, you have ascertained at what rates it is handled by water in bulk with modern equipment at other places?

A. I have.

Q. Now, Mr. Bell, if that can be done, why have not yourself and the grain men of Nashville done that, why is it that you have been paying the through rates protected at Nashville with this reshipping practice, and have not been bringing in your grain by river, or making some effort so to do, at this greatly reduced rate?

A. Because of the location of our plants on the rails of the rail lines along, and that location was brought about by the fact that we had reshipping at Nashville protecting the through rate from the Ohio River and western grain fields into the southeast, permitting the stopping and handling of grain at Nashville with this reshipping arrangement; that is a convenient way to handle it; that is one reason why the railroads have been able to continue the handling of this grain at the seemingly high revenue.

Q. You mean seemingly high over the potential competition in the Cumberland River?

A. In the Cumberland River; that is what I mean. We could change our rates into the southeast from the western and northwestern grain fields by putting in a link of river traffic in the center of the movement, on the Ohio and Cumberland Rivers, but when we did that we would then have but reduced the revenue of the carrying lines as much as would be necessary to meet the rate that we might establish on this link, and we would not be benefited one particle because we would be on the same basis as Cairo, St. Louis, Evansville, Henderson, Louisville and all other points serving the southeastern territory.

Q. Let me see if I understand you. Assuming that the Nashville grain interests would put in boat lines for one link, as you express it, of the through movement of the grain from the grain-producing west into the consuming southeastern territory; that link being from the Ohio River crossings to Nashville—assuming with modern equipment this could be done at two cents—you would thus have built up a cheaper through rate from those crossing points via Nashville into southeastern consuming territory; that would follow, would it not?

A. Sure, that is correct.

Q. Now, if the rail lines via Nashville into the consuming territory, and the other rail lines running into consuming territory, were to meet the through rate that you had thus established, would that relieve or

help you on your relative position with your competitors at the Ohio River crossings in supplying the southeast?

A. Not one particle.

Q. You would have succeeded in the general reduction of all rates to the southeast?

A. Correct.

Q. Not altered your general position with reference to your competitors at the Ohio River?

A. Exactly.

Q. Do you realize that as favorable a basis as you can ever be on is being equalized with the Ohio and Mississippi River crossing points?

A. Absolutely.

Q. Now, if you did, by the means you have said, build up this river shipping link which would reduce all the rates, we will say, and the rail lines met it, what would you have to do before you brought about that general reduction of rates that would leave you in your same relative position?

A. We would have to abandon our present handling facilities, practically all of them except one plant, the river and rail warehouse, and would have to go to the expense of building on the river bank houses for handling bulk grain to and from barges; then we would have to go to the expense of constructing tow boats and barges to handle the river grain, and while we were doing that we would be out of business for a period of several months at least. The grain business is a business with very sharp competition; we have to work on a very close margin, and we have to watch for the protection of our business with our customers, any break in the continuity of our business would mean the loss of customers, and we would find at the end of this period of several months that we would have to rebuild our business almost from the ground up. I imagine we would certainly lose a great deal of business and customers while we were establishing this new arrangement for handling grain from the northwest into the southeast.

Q. As I understand, then, you could sacrifice your existing investments on the rail lines, and put a new investment in handling facilities on the river front, and modern water craft on the river, and after working out that organization, and standing the damages, and making the new investment, and standing all damages incident to the suspension of business in the interim, you would at the end of it be, relatively to your competitors, where you are now?

A. Exactly so.

Q. With what points does Nashville compete for the grain trade in southeastern consuming territory?

A. With St. Louis, Cairo, Evansville, Henderson, Louisville, Cincinnati—all points that sell into the southeastern territory.

Q. The various rail gateways on those rivers?

A. Yes.

Q. Is Nashville itself located in a surplus grain producing territory?

A. It is.

Q. Tennessee grows more grain than she consumes?

A. She does.

Q. Is all of the grain grown in the Wabash, Ohio, Mississippi and Cumberland River valleys directly tributary to Nashville both by the confluence of naturally navigable waterways as well as by rail connections?

A. It is.

Q. Is the territory traversed by these river valleys a surplus grain producing country?

A. It is.

Q. Is Nashville a point, therefore, located within a surplus grain producing country?

A. It certainly is.

Q. Are Atlanta and the complaining Georgia points located in such a surplus grain growing country?

A. I cannot think that they are from the fact that they buy largely of grain throughout the year.

Q. About what is the average movement of grain in bushels via the Nashville gateway from the grain producing country into the grain consuming southeast? Well, I will say what has it been for the last two years?

A. Well, it has been thirty-six million bushels for the year ending 1909, as I just stated, and for the subsequent year something under that, about twenty-nine million, as I remember.

Q. And grain can and does move from all of the Ohio and Mississippi River rail crossings into southeastern consuming territory that does not go via Nashville at all?

A. It certainly does, largely.

Q. What would the grain interests of Nashville do in the event the reshipping practice at Nashville was abolished and the present rate adjustment maintained?

A. They would undoubtedly go to ruin.

Q. They would make the sacrifice and the investment necessary to build up the cheaper link that you described in the through movement?

A. They would certainly have to.

Q. Or quit business?

A. Certainly.

Q. And they would have to do this realizing they would not acquire any advantage over their competitors?

A. Absolutely none.

Q. If the reshipping practice at Nashville were abolished, and the rate in and out of Nashville maintained, and the grain men of Nashville did not see fit to meet the situation, but retired from business, and the Nashville market became defunct, state whether or not the Ohio and Mississippi River crossings and rail gateways between the grain producing west and the grain consuming southeast could do the business and all the business that is now done through Nashville, at exactly the same cost to consumers in southeast territory.

A. They certainly could.

Q. That Nashville now does?

A. They certainly could, and I cannot see that it would make any material difference to any of the southeast territory whether Nashville is or is not in business except for the convenience of buying from Nashville; they like us; they like to trade with us.

Q. Well, this is true, I take it, Mr. Bell, that all through rates from the Ohio River crossings into the southeast consuming territory are protected and applied at Nashville, while a stoppage in transit privilege at Nashville is there permitted?

A. That is right.

Q. It is likewise true that through rates made from the Ohio River crossing points to junction points or basing points in southeast consuming territory—that is to those points which themselves have competitive through rates with the complaining Georgia points from the Ohio River—it is true that those through rates from the Ohio River crossing points exist to those competitive basing points in southeast territory less than a combination of rates made on the complaining Georgia points—that is true?

A. Yes sir.

MR. NEEDHAM: I did not quite get the question.

JUDGE MACK: That is the rate from Louisville to a junction point in the Atlanta territory would be less than the rate from Louisville to Atlanta and then the local to the points?

MR. MCCONNICO: That is the point.

MR. NEEDHAM: What was the answer?

MR. BELL: Yes.

MR. WIMBISH: I am reluctant to make objection and have not objected to a reasonable amount of leading questions, but I submit that when he puts a witness up and argues the case and the witness says "That is true," we do not save any time and are not proceeding according to the liberal methods in vogue.

MR. MCCONNICO: I will correct this in the future:

I do not want to do anything offensive or objectionable to you. Now, Mr. Bell, if the Nashville grain market was defunct—you have answered with respect to what the Ohio River crossing points could do in southeast territory—what would be the effect on consumers in southeast territory with respect to being deprived of a competitive supply market and their nearest competitive supply market with the Ohio River crossings?

A. Well, they would probably have some loss on that account because competition—the more competition they have the cheaper they could naturally buy their grain or any other product, but Nashville would be one more competitive market, and perhaps the most convenient market they have to buy from, on account of its nearness, and the safety with which they could handle the grain from Nashville to all this territory during the critical period that has been mentioned; but they could get their goods—their grain—from the Ohio River crossing, of course.

Q. State whether or not with the reshipping practice abolished at Nashville, and with Nashville eliminated from the grain situation, assuming it to be a defunct market, could any point in southeast territory that can now draw grain from Atlanta on less—no; could any point in southeast territory that could now draw grain from Nashville on the basis of the through rate from the Ohio River which is less than a combination on any of the complaining Georgia points, still continue to draw grain from any or all of the Mississippi and Ohio River crossings exactly as they now do, from Nashville and at the same rates?

A. They could draw at the same rates. As I said a while ago it would not be quite as convenient; we are nearer to them and they can anticipate their wants better but that is the only advantage.

Q. The grain will be in transit between Nashville storage houses and the consuming southeast a shorter period of time?

A. Yes.

Q. They can get quicker shipments from Nashville than from the Ohio River?

A. Quicker shipments and quicker time to destination.

Q. Exactly; now do southeastern consumers receive grain in better condition from the Nashville storage point than from any possible storage point on the Mississippi and Ohio River crossings, and if so, why, as a rule?

A. They undoubtedly do, because it is a shorter haul from the time the grain is handled at Nashville into the southeast, and besides the temperature of the grain has been acclimated; that is, has been brought to the temperature of Nashville instead of the temperature of the river much further north, where there is lower temperature during a long period than in the southeast. The additional—the quicker handling and the reduction of the low temperature of the grain to the temperature of Nashville, it being a city further southward, would undoubtedly enable consumers in the southeast to get better grain from Nashville than they could get from the markets further away, for instance from the river points and from any points beyond the river.

MR. WIMBISH: You mean corn by grain?

A. I mean corn.

Q. Well, Mr. Bell, what per cent of the total grain moving from Nashville into the southeastern consuming territory where these complaining parties are, is corn; what per cent is corn?

A. 75 to 80 per cent.

Q. What period of the year is it when this corn may be damaged in transit if not rehandled and conditioned in transit?

A. The germinating season. The season of the most critical danger in handling is from the first of February until about the first of June.

Q. Is that the season for the heavy movement of

grain from the grain producing into the grain consuming country?

A. That is the season in which we do perhaps seventy-five per cent of our total annual business.

Q. With the southeast?

A. With the southeast.

Q. And seventy-five per cent of all that business is corn?

A. Sure.

Q. I want you to state what is the relative advantage of Nashville as a point for drying and conditioning the grain in transit as compared with any of the Mississippi or Ohio River gateways.

A. The geographical situation of Nashville makes it more favorable for drying and conditioning of grain, in that grain from the western grain country coming through those Ohio River gateways, moving south, will have reached a climate of higher temperature. And as all grain contains more or less moisture, the moisture which has been in a frozen condition or a cooler condition will become warmer and the corn in a great many instances, unless it is extremely dry, has to have rehandling en route. That is, when I say has to have it, I do not mean that all corn will get out of condition if it is not rehandled; but it makes it much safer for the dealers, both in the southeast, and the dealers in primary markets, who handle the grain to have it rehandled in transit and stored and brought to the higher temperature. And it also enables them to discover any damage that is just beginning on account of this moisture and the consequent heating of the corn. There is very little corn that comes to Nashville so much out of condition, to be very seriously damaged in value after it goes through the dryers.

Q. At Nashville?

A. At Nashville; but the same corn if sent on through and has anywhere from two days, or one day even, to a week or ten days in the cars, in this spoiling condition, will be damaged largely.

Q. Now, Mr. Bell, right there you have said that by the time the corn comes to Nashville that there is very little of it that cannot be saved by proper drying treatment at Nashville; now, is the amount that has to be dried and rehandled at Nashville to prevent it from spoiling before it could get to any of these complaining Georgia points a large amount or a small amount?

A. It is a large amount. There is a great deal of it that has to be dried, especially during the handling season from the first of February until the first of June.

Q. Is that why Nashville has more drying facilities or as many as all the Ohio River crossings put together, and is that why it has the largest sacking facilities, as you expressed it this morning, in the world?

A. That is the reasons for the drying facilities, but the principal reason for the sacking facilities is that we sell more sacked grain in the southeast territory than any market, that we confine ourselves largely to the southeast territory for our sales, and they take grain very largely in sacks, but I think—

Q. That is, the trade down there want it in sacks?

A. The trade in the southeast want it in sacks, but the reason why we have larger drying facilities at Nashville than St. Louis, for instance, is that grain moving south requires treatment, whereas grain shipped east or in other directions from St. Louis would not need treatment because there was no change in temperature.

Q. In the movement of grain from the grain producing west and northwest via the Ohio River gateways and via Nashville into the grain consuming southeast, state whether or not the Ohio River crossing points in many instances will be a point at which it will be too soon to apply the curing processes, while Nashville would be the proper point to apply the curing processes, and sending it beyond Nashville with-

out curing processes would mean the destruction of the grain?

A. That is evidently true, for the climate, the temperature, at Nashville is more nearly the temperature of the territory that we serve than the Ohio river points; besides the grain has to be in the cars a certain length of time before it shows this heating, or sweating, which is previous to the heating. If there is a change of temperature sometimes it would not show the beginning of damage within a day, but it might show it within three or four days, and, consequently, Nashville would be an ideal point, a more nearly ideal point at which to rehandle for that cause. Then it is evidently much safer to rehandle at Nashville than to rehandle further south, because when grain does begin to heat a conflagration in a large city is not any more frightful than is the result of that heating in a very few days, as far as the initial value is concerned; it goes like wild fire.

Q. If there is any historical demonstration, any actual cases of what you have said with respect to grain which has actually moved through Mississippi or Ohio River crossing points, and by such inspection and drying facilities as they have there, and on into southeast, without being stopped at Nashville, spoiling and having to be brought back—

JUDGE MACK: Is this simply cumulative of this morning?

MR. MCCONNICO: On that point Mr. Kelly said he was not in the grain business and we had better refer that to some grain men.

Mr. Bell: I know that there has been considerable grain returned to Nashville for kiln drying that has been shipped south of Nashville from these western points.

MR. MCCONNICO: Without having been stopped and treated in Nashville?

MR. WIMBISH: Are you speaking of your own knowledge?

MR. BELL: Of my own historical knowledge and my own knowledge. I have had to do that myself.

MR. WIMBISH: I think witness should state of his own knowledge.

MR. McCONNICO: If you know as a matter of fact that it is done, as you know anything else with respect to your business at Nashville, I will ask you to state it?

A. That is the way that I know it. I could not recall at this particular instance without looking at my records, but I know that I have done it, and that it has been done by others.

Q. And that is common knowledge?

A. Common knowledge in the trade at Nashville.

Q. In the movement of grain from the grain producing country, by the time it comes to the Mississippi or Ohio River crossings, as I understand, it might not need treatment?

MR. WIMBISH: I submit, your Honor, they have gone over that with this witness before.

MR. McCONNICO: I want to get one point.

MR. BELL: That is my understanding of it; in fact, I know that is the case.

Q. And could it be that no inspection there could decide whether it needed treatment?

A. In most instances an inspection there would not decide, but by the time it comes to Nashville you could tell sure.

Q. And there is hardly any of it that ever goes there in such a condition that treatment at that place cannot save it?

A. Absolutely a small percentage.

Q. Now, Mr. Bell, I will ask you if you know this as a matter of experience, of common knowledge of your business there in Nashville and of the grain business in Nashville, that some shippers west of the Mississippi River will refuse and decline to ship grain for delivery south of Nashville?

A. I have been told by dealers on the Merchants' Exchange floor at St. Louis that they would not do

so, and I know it is a matter of common knowledge that there are a great many shippers that so refuse.

Q. Do they regard Nashville as the danger line?

A. They regard Nashville as the limit of the territory in that direction to which they are willing to ship.

Q. Because that is the danger line in the through movement?

A. In the through movement to the southeast.

Q. Now with respect to handling grain in boats, how is grain moved when moved upon packet boats?

A. The sacks of grain are piled up on the decks of the boat.

Q. Will grain sacked and piled on packet boats often spoil like it will confined in cars, and if not, why not?

A. It will not, because being sacked and piled on the deck of the boat, the motion of the boat creates an atmosphere, a moving atmosphere that tends to dry the corn out while it is on the boats; it will improve in transit on that account.

Q. Is fanning grain one of the first steps toward saving it if not too far gone?

A. It is the first step.

Q. Can much of the grain that reaches Nashville needing treatment be saved by a simple fanning without taking it into the kiln dryer?

A. A large percentage can be saved in that way.

Q. Is much of it after fanning saved so that it does not have to go through your drying facilities at all?

A. Usually so.

Cross-examination.

Mr. Wimbish: Mr. Bell, do I understand you correctly that 75 per cent of the grain to which rebilling is applied in Nashville consists of corn?

A. I said approximately.

Q. You said 75 to 80?

A. 75 to 80 is my opinion; I do not know that it is exactly 75 or exactly 80, but I know that it is approximately 75 or 80 per cent of the entire business.

Q. Well, now, of all grain products and hay, 75 per cent that is rebilled at Nashville, is corn?

A. I did not say grain products and hay.

Q. Well, tell me now what are the respective proportions and upon what fact you base your conclusion.

A. I could not say what the exact proportions are. I base my conclusions upon my general knowledge of my own business and of the business handled at Nashville.

Q. Then you adhere to your conclusion?

A. I do.

Q. That 75 per cent of that is corn?

A. That approximately 75 per cent of the grain only—not the grain products.

Q. How would that per cent be varied, by taking all of these products?

A. I could not say; I do not handle all.

Q. You mean to say then, that of wheat, oats, barley and corn—that 75 per cent of that total is corn?

A. I think that is absolutely correct.

Q. Then you base that upon your general knowledge?

A. Of my own business and the business moving from Nashville.

Q. You have made no investigation along that line?

A. No.

Q. You have no facts except general impression?

A. My general knowledge of the business.

Q. If you have knowledge, you must have knowledge upon which to base the knowledge.

A. I have facts upon the handling of the business that I am in contact with from day to day.

Q. Mr. Bell, how much longer would it take to convey a car load of corn from Cincinnati to Atlanta than it would from Cincinnati to Nashville by the

schedules over the lines in actual operation, through movement, now, of a car load of grain, billed through?

A. I do not know the relative difference of the mileage of the two routes.

Q. I can give you that; say it is 474 miles from Cincinnati to Atlanta by the Cincinnati Southern to the Western and Atlantic, and 318 from Cincinnati to Nashville by the Louisville and Nashville; now moving in car load lots on a through freight train, how much longer would it take to go from Cincinnati to Atlanta than from Cincinnati to Nashville?

A. Well that would depend largely upon the conditions of the railway lines.

Q. Give them equal operating conditions; say they are the same?

A. It would vary then for different periods. You could not say it is the same when the railroads are congested.

Q. I am talking about normal conditions applicable to both lines.

A. Normal conditions, Mr. Wimbish, in the summer months when business is light, would be no congestion anywhere. The normal condition when the grain is handled from the northwest to the southeast usually, which is during the germinating season, would mean they are liable to have congestion anywhere along the line, and every mile added to the distance would make that congestion more liable to occur, so there is no way you can say a rule would apply during the whole twelve months.

Q. Now, Mr. Bell, take the same conditions existing on the respective lines, and how much longer now with the same conditions applying would it require to move a crop from Cincinnati to Atlanta than from Cincinnati to Nashville?

MR. BELL: When?

MR. WIMBISH: Take it to-day.

A. Today there ought not to be a very great difference because there is very little stuff moving either

via Nashville or via Cincinnati into the southeast, but if you want to take it when the real movement occurs, which would be the rule to apply, I should think, if you want to get an idea of the difference, you would have to take it in February, March, April or May, during the time when the movement is heavy. At that time the railroads have all they can do, and sometimes a great deal more, and they are liable to get congested or get cars cut out anywhere along the line. Sometimes a train starts and has too many cars and they cut a car out and let another train take it up.

Q. But, Mr. Bell, apply the same conditions to each line and tell me.

A. Well, I should say that the relative difference in the heavy carrying season might be as much as five or six days.

MR. WIMBISH: Very well.

MR. BELL: Possibly longer.

MR. WIMBISH: You are content with that answer? What investigation did you make into the cost of modern model steamboat and barges for the transportation of grain on the Cumberland River; how did you investigate them?

A. I have already explained that.

Q. I would rather you explained it in a little more detail.

A. I know the cost of handling.

Q. I am talking now about the cost of these modern appliances.

A. I have never built a barge; I would have to take the word of somebody who was an authority on the cost of a barge. The same would apply to a tow boat.

Q. Whose word did you take in your investigation?

A. I do not remember all of the authority that I had. I can mention Captain Gallagher as one of them, and he has been dealing in boats and handling boats for years and ought to be a pretty good author-

ity on the cost of tow boats, barges, packets or any other kind of river craft.

Q. Then you derived your information as to the cost of this modern model equipment from what Captain Gallagher told you?

A. Not altogether.

Q. Well, who else?

A. Mr. Kelly is also somewhat conversant with river matters and the cost of barges and boats. Mr. Barham has been in maritime traffic and we have several pretty intelligent people that know about things. We discussed the matter; I think we arrived at a very reasonable—

MR. WIMBISH: All right; never mind about that.

MR. BELL: Cost.

MR. WIMBISH: Never mind about that. How many barges did you figure on?

A. We figured on four barges.

Q. What would be their capacity?

A. Forty thousand bushels.

MR. MCCONNICO: Have you got the figures?

A. I believe I have them. (Takes paper from pocket and continues.) This memorandum is a little different from what I was just figuring on. This is six wooden barges instead of four, we figured on both bases. I was figuring on four wooden barges of about forty thousand bushels. This is six wooden barges to handle about, I imagine, twenty-five thousand bushels each.

MR. WIMBISH: Well, now, is that the modern equipment that you had reference to?

A. This is the modern equipment that I had reference to.

Q. Wooden barges?

A. Yes sir.

Q. What do they cost?

A. Let us see; six wooden barges, about five thousand to fifty-five hundred dollars apiece.

Q. Where did you get your price? How did you arrive at your cost?

A. We arrived at the cost from the knowledge of those people whom I spoke of, as to the cost of barges of this kind.

Q. What other equipment did you figure on? Did you say packet or tow?

A. Tow boat.

Q. How many tow boats did you figure on?

A. For the handling of six barges it would require only one tow boat. One tow boat could handle the six barges on that part of the river that we have to figure on.

Q. What would be the power of that? Did you figure that tow boat, where you would buy it, and at what cost?

A. We did; we figured that the tow boat would cost not exceeding $25,000.

Q. Did you get any prices on that or was that just mere general figuring?

A. That was from knowledge; we did not get prices.

Q. What would be the cost now of that model equipment you spoke of?

A. That would make the total cost of the barges and the towboat $55,000.

Q. How much grain could that convey during say a period of a month?

A. Well it—Those barges would haul forty-two hundred tons of grain; reduced to bushels would be 150,000 bushels of corn for each trip.

Q. How many trips would you make in a week?

A. We could make four trips a month on that.

Q. Four a month?

A. Four trips a month.

Q. What would be the draft of those vessels? How much water would they draw?

A. Well, I could not tell you what the draft would be.

Q. In arriving at your cost of two cents per hundred pounds, how much did you allow for the interest on your investment?

A. Well, we figured in this a profit on the hand-

ling; we did not allow any interest on the investment, because that would be included in the profit of handling.

Q. I mean in arriving at the cost?

A. We did allow ten per cent per year for depreciation and maintenance, or fifty-five hundred dollars per year depreciation.

Q. You did not figure, then, anything on the cost of your investment?

MR. BELL: What do you mean?

Q. In finding out the cost?

A. Yes, we figured on a return of $7,736 per year on an investment of $5,500.

JUDGE MACK: Fifty-five hundred dollars?

A. No, $55,000 was the cost of the equipment, your Honor, and $5,500 was the depreciation that we allowed. We took off $5,500.

JUDGE MACK: How much profit did you figure?

A. $7,736 on $55,000 investment; that is the per annum return.

MR. WIMBISH: How much did you allow in arriving at cost for the expense of sacking that grain by hand and loading it?

A. We did not anticipate sacking it by hand and loading it.

Q. Going to bring that in bulk?

A. Going to bring that in bulk.

Q. How much did you allow for elevation and loading?

A. We allowed the present rate of loading that the St. Louis public elevators charge, which is one-eighth of a cent per bushel.

Q. But now you have not got the elevators on the Ohio River, have you? On the crossings, have you?

A. No. There is a million bushel elevator at Cairo that has a marine leg for loading grain in bulk in barges.

Q. Is there any other at any other river crossing?

A. Well, I do not know.

Q. You did not figure on but one then?

A. It was not necessary.

Q. So then you would be dependent upon one elevator at Cairo for loading under existing conditions?

A. I think we would. I would not say for sure.

Q. So your boat would ply from Cairo to Nashville?

A. That is right.

Q. How much did you allow for unloading?

A. Well, the cost of unloading from the barge would be less than it would be to unload from cars which is our present expense. We were figuring this as compared with the movement by rail to see what we could do if we had to go to the river.

Q. How much tonnage did you figure on to produce this revenue?

A. We figured on twenty-eight trips per year, which is figuring on only seven months of navigation.

Q. Well, and how much grain were you going to carry on each of those trips?

A. 150,000 bushels.

Q. You figured on your maximum capacity, then?

A. We figured on the capacity that we would have the equipment for; that would be the maximum capacity, of course.

Q. In other words, Mr. Bell, what you did was to sit down, and take an ideal condition, and say if we can yet this modern equipment for $55,000, and we can get at Cairo a maximum load every trip, and can convey that as a through movement without having to stop anywhere, probably basing your opinion, if I am correct, on this special movement from St. Louis, you could move for two cents per hundred pounds on those conditions?

A. Yes sir, except this, that we left a margin there of one month at least because at the present time the season of navigation on the river is a month longer as a usual thing; then we figured on more expense; we gave a margin of $50 per day, well about $25 per day

I think, on the expense, and we left liberal allowances all along the line to take care of any conditions of that kind.

Q. Well, now, Mr. Bell, what would you do for the five months in the year when the river was not navigable? Would you expect it to remain at the Ohio River crossing waiting for you?

A. In this statement we have provided for tying that equipment up to the bank for five months of the year, but we did that for the same reason that we left the margins spoken of. Now there is not a month in the year that this equipment could not be used to handle grain; we could use it on the Ohio and Mississippi Rivers at the time when the Cumberland River is not navigable, during August or September or along that time.

Q. That was not exactly my question. I want to know what you dealers in Nashville would do during those five months when you had no transportation.

A. Well, we would have to be content with what we could get locally, or we would be at a disadvantage in the freight rate on what we had to bring in over and above what we could accumulate by the end of this navigable period in our warehouses and elevators at Nashville. We can accumulate perhaps between three and four million bushels. We have, as previously shown, a capacity of 3,632,500 bushels, as the storage capacity in Nashville now, and that would be enough to run us probably through the summer months, because at that time our business is very light. Fortunately for us, the period of the heaviest movement coincides with the time that the river is navigable from the west into Nashville.

Q. In other words, you would have to have your capital tied up in the storage of grain for varying periods during those five months of non-navigation; you would have to carry a stock in Nashville to meet that contingency or pay the rail rates?

A. Yes sir.

Q. Now, what is the cost of transferring that grain—that corn—from the boat side to your warehouse; how far is your warehouse from the river?

A. This is estimated upon our having facilities for handling on the river, from the boat into an elevator, to be constructed on the river with a marine leg.

Q. I understand with reference to conditions that are prospective, I refer to conditions existing.

A. The tow boat line is but prospective.

Q. I understand, but what would be the cost now of conveying the grain from the boat and transferring it to your warehouse? How much a hundred pounds?

A. The railroads, the Nashville Terminal Company charge a cent a hundred for transfer across town.

Q. Mr. Bell, if you established a line such as you have spoken of, and began transporting it for two cents a hundred pounds, including unloading, and your transferring charge is one cent a hundred pounds, then without erecting these elevators at the river side in Nashville you can lay that grain down in your warehouse at three cents per hundred pounds. Could you not?

A. At close to that; yes sir.

Q. Well, two cents to move and transfer charges one cent, then it must be you could put it in your warehouse.

A. There would be an additional handling.

Q. I understand you to say the charge of the transfer company was one cent per hundred pounds.

A. No, I said that in this estimate we did not figure any additional charge from the boat into the elevator because that would cost us less than it cost us now to unload from cars into our elevators.

JUDGE MACK: The question now is, under the present conditions, if you had a boat running to the river banks, what would it cost you to get the grain out of the boat and into your present elevators, where they now are, over and above what it costs you to get them

from the railroads into your present elevators as they now are?

A. I say it would cost one cent per hundred for transfer across town.

JUDGE MACK: That is drayage?

A. That is transfer on the rails of the Terminal Company.

JUDGE MACK: You would have to get it out of the boat and into the cars first. What would it cost to do that?

A. It ought to cost us one-eighth of a cent a bushel to get it into the cars. We figured they would handle it from the elevators into the cars at St. Louis for one-eighth; that is, we did not figure that, but know that is the rate. We ought to be able to handle it from the barges into the cars with a marine leg for the same price I should think; that would make it one cent per hundred and one-eighth of a cent per bushel.

JUDGE MACK: One-eighth cent per bushel?

A. Yes sir.

JUDGE MACK: That is how much a hundred, about one-half, or three-sixteenths of a cent?

A. About three-sixteenths.

JUDGE MACK: That would be two cents plus one cent plus three-sixteenths, or three and three-sixteenths cents per hundred.

A. Yes sir.

JUDGE MACK: Let me ask a question. Did you state the total cost to be $55,000 for the barge line?

MR. BELL: For the barge line.

JUDGE MACK: In order to put grain into the cars, off the boats, you would have to have an elevator on the river.

A. Yes sir.

JUDGE MACK: How much would that cost? Did you figure that?

A. We did not figure on the cost of the elevator, because that would be an indefinite amount. It would depend upon how much the ground would cost and how large the elevator was. But that would be

a part of the elevator capacity of the trade of Nashville if it was built there, and would have to be added to any fixed expenses for doing a grain business at Nashville on a river basis.

JUDGE MACK: Yes, but give an approximation as to what cost elevators on the river would involve in order to do the business you contemplate, with this line of boats?

A. I could not make an approximation that would be of much value, because I do not know, in the first place, what the cost of the ground would be on the river front.

JUDGE MACK: Is it a matter of a fifty thousand or a five hundred thousand dollar investment?

A. It could not be $500,000 investment to handle this grain. I imagine it would be nearer $50,000.

JUDGE MACK: What would be the cost of going from the barges to your present elevators if you did not have this marine leg, or would it practicable at all?

A. It would not be practicable at all, because it would have to be handled in sacks. We could not get it off the boats and carry it to our present elevators unless it was in sacks.

JUDGE MACK: And if you handled it in sacks, the expense would be greatly increased, would it, above the two cents?

A. Yes sir; greatly increased.

MR. WIMBISH: It was testified, Mr. Bell, there is already an elevator on the river brink; could not that be used?

A. That is an elevator for handling sacked grain. It has no marine leg; no way to handle bulk grain at this river warehouse.

Q. Could not the present elevator be changed without any great expense?

A. Well, I do not think it could, it is not large enough, and it is not properly situated. It sits too far back.

Q. Now, Mr. Bell, if you can lay down the grain in

your warehouse at 3½ cents a hundred, or 3 3 16, less than 3½, projected on a two-cent river rate, then in order for the railroads to run you out of business or to compete with you, they would have to make a rate of 3½ cents a hundred to Nashville from the Ohio River crossings.

A. Of approximately that.

Q. Do you think they would or could do that?

A. I do not think anything about it, Mr. Wimbish; I know they would do it.

Q. They would put in a rate as low as that?

A. A rate that would give them the business.

JUDGE MACK: A local or through rate?

A. If not a local rate to Nashville, they would put in a through rate via Nashville to the points in the southeast that would include whatever this river rate on this link from the Ohio River to Nashville might be.

MR. WIMBISH: Louisville or Cairo?

A. From all their river crossings I take it. As they equalize all their river gateways now, they would then equalize them. The rates in this southeast territory are all made on each other; that is, they are all equalized through all the gateways and in every direction. For instance, there is the Illinois Central from Cairo, going down to Birmingham, and the Mobile and Ohio from Cairo going down to Montgomery, reaching through Montgomery; the Louisville and Nashville from Henderson and from Louisville going through Nashville; the Nashville, Chattanooga and St. Louis through Paducah, and connecting with the Illinois Central at Martin, making a through rate by that direction; the Southern Railway—

MR. WIMBISH: We all know the differentials, Mr. Bell, we can shorten it.

MR. BELL: I just want to impress this point, that the rate on grain from all this western territory going back as far as Omaha, is equalized, and farther back than Omaha from points based on Omaha, is

equalized through all these Ohio River gateways to this southeast territory. Now if a link was made that would reduce the rate say eight cents per hundred, they would have to put in a rate from those river crossings equalizing those rates, and one must be equalized with the other; otherwise chaos would result because every rate must equalize with every other rate.

Q. Under the present adjustment?

A. Under the adjustment that has been built up within the last fifty years, and satisfactory during that time.

Q. Now, Mr. Bell, if Captain Gallagher is right that fourteen cents would be a normal packet boat rate from Louisville to Nashville, do you think the Louisville and Nashville would meet that by putting in a three and one-half cent rate to meet the boat competition from Cairo?

A. As a plain citizen and grain man, not connected with any transportation line, I do not believe the rate from Louisville is governed entirely by the rate down the Ohio and up the Cumberland River, but, according to this adjustment I have just spoken of, every line must have the same adjustment through the Ohio River gateways. I may be mistaken about that.

Q. Do you think the railroads would make that haul at three and one-half cents per hundred pounds?

A. On the combination of the through rate. They might not give it to Nashville; we might have to rely on the river, but, undoubtedly, if the Louisville and Nashville and the Nashville, Chattanooga and St. Louis did not meet it to Nashville, the lines serving the Southern territory would meet it on both sides of us.

Q. We have been trying very hard to get the figures on grain produced, how much is shipped in and out of Nashville; and we will find then that the difference would be locally consumed. Can you not give this?

A. I am unable to give you that, but that is governed by the size of Nashville as I take it, and the local consumption there. Mr. McConnico put census reports in the record that show the relative grain production in 1870 and showing the grain center then in the Wabash and Ohio River valley, before the opening and development of the western grain fields, and the subsequent census reports show that grain production has increased instead of decreased in those valleys.

MR. WIMBISH: If the production of grain has increased in proportion to the increase of population I want to find it out.

A. I can not answer. I can only say from my knowledge there is a large movement of local corn into Nashville that does not carry reshipment, both by river and rail.

Q. Have you any facts or figures from which you can definitely demonstrate and draw the conclusion that Nashville territory produces more grain that is consumed?

MR. McCONNICO: What do you mean by Nashville territory?

MR. WIMBISH: The Cumberland Valley territory, I meant. Probably I can define it better by saying the grain that is not subject to a rebilling privilege, grain brought in locally by rail and boat and not from the Ohio River crossings, defining that as local grain, even though it may come up from the Cumberland Valley of Kentucky. Have you any facts or figures from which you can draw a fair conclusion that more grain, not only corn but grain of all kinds, is produced than is consumed?

A. No, I have no figures. I only know that we handle largely from this territory and that there is a great deal of grain shipped out of Nashville to the southeast that does not carry transit privileges of reshipping.

MR. WIMBISH: That is all we have to ask.

MR. ESTERLINE: Mr. Bell, I understood you to say that in handling the grain on the boats in sacks that

the rattle and jar of the boats would save the grain from the condition which produced heating.

A. You misunderstood me, Mr. Esterline.

Q. What was that point about the grain being shifted on the boats in the sacks? I did not get that quite clear.

A. I said that the grain has to be piled or stacked up in tiers on the deck of the boat and the boat in going forward at a rate of eight or ten miles an hour will create a moving atmosphere through those piles that will improve the quality of the grain.

Q. Yes; now does not that same result occur in transportation by railroad in freight cars?

A. No sir, because the freight cars are closed up, the doors are sealed and the atmosphere cannot get through the freight cars like it can through the piles of sacks of grain on the open deck of the packet boat.

Q. What is meant by the shrinking of grain, handling of grain in the freight cars? That is a well-known term, is it not?

A. That is the waste and variation of scales between one point and another, while the boat does not rattle and shake, the car does rattle and shake, and if there is any kind of a leak—

Q. Not leak; I am talking about a car that does not leak; not about scales either, but just as a matter of—

A. You cannot eliminate the matter of scales because there is a variation between large scales from one point to another and there is a loss in loading and unloading cars.

Q. Is there not a recognized term in the transportation by freight as "shrinkage" by reason of handling in the car?

A. I was just trying to explain that. There is, and it is brought about by the handling from the cars into the elevators, from the elevators into the cars. Now the grain is weighted in a hopper scale perhaps one hundred or two hundred feet above the car.

MR. ESTERLINE: I understand.

MR. BELL: Then the bottom of this scale is pulled open and there is an opening there of eighteen inches to two feet square perhaps. That grain runs out of that and it does not go in an airtight mouth or spout, but the spout has a space between it and the scale, necessarily, so that they can get a correct weight on the scale. There is a little place where the dust blows out; there is always dust in all kinds of grain, this spout runs out the side of the elevator and into the side of the car.

Q. Yes, but that is not my question.

JUDGE MACK: Is there any shrinkage in the car itself during the movement?

A. There is very little. I could not say there is not any, but there is not as much, your Honor, as there is in the handling to and from the cars.

JUDGE MACK: He is not asking that, I understand.

A. The reason I was taking up your time at length I wanted to explain why and how most of the shrinkage occurs.

MR. ESTERLINE: Put it this way. If a car of grain is loaded, we will say, in Chicago, sealed, weighed, transported to Nashville, weighed, unsealed, the difference of weight is one thousand pounds. Does the railroad pay you a freight claim on that or do they charge that up to shrinkage?

A. We have had a great deal of trouble in collecting all kinds of freight claims.

MR. ESTERLINE: If you cannot answer that question in that form I will abandon it; I will not ask it again.

MR. BELL: If the car has not been sealed.

MR. ESTERLINE: That is not my question.

A. I cannot answer unless you let me qualify as to whether the railroad would entertain a claim.

Q. Do they charge that to shrinkage, most of it?

A. If the seal has been broken we can collect a claim on it, and if the seal is intact they will say that is a variation of scales.

Q. Do not the tariffs of the company provide for shrinkage in freight claims?

A. Some do and some do not.

Q. Do not most of them?

A. I cannot say.

Q. Do you not in your freight claims put them in for shrinkage?

A. As I remember, we do, in making claims for shortage, deduct one-eighth of one per cent for variation in scales.

Q. That answers my question. Now, then, you say you are not on the river; you are on the railroad with your business at Nashville. Is that right?

JUDGE MACK: He said that.

MR. BELL: Yes.

Q. Now, then, you knew that this rebilling privilege is a thing that might be taken out by the railroads themselves, did you not?

A. No more than I know that all things are uncertain except death and taxes.

Q. But in the conduct of your business there you are aware that the railroad might have taken that out themselves voluntarily?

A. I did not figure on that in the least.

Q. But you knew by result—

A. I know that we might have an earthquake like San Francisco.

Q. But you have more faith in the railroad preserving those privileges than in paying freight claims?

A. I do.

Q. It is equal to an earthquake?

A. If they take out the rebilling? More! if they take it out of their own accord, and I do know that they dislike to pay railroad claims, although I suppose we collect any just claim by working with them.

Q. Now take corn in heating, or heating of corn, or other grain, transported in the cars; they pay you those freight claims when delay in transportation occurs?

A. If there is sufficient delay so that they cannot make any defense in the handling of the shipment they pay the claims.

Q. Yes, and then when you get a car load of corn or other grain that is heated and there has been a delay they pay you that freight claim?

A. Then comes up the question as to whether the delay has been excessive, and in either event neither ourselves nor any other grain dealer will court claims against the railroad company for heated grain. If it could have been prevented by any manner of means, we will do it and take any trouble and care to do it, because it is much better for the railroads to handle our business without claims than it is to have a car of corn go bad, be heated, and have to make claims against the railroad company and have our troubles for months and months. We fight just as shy of railroad claims as we can.

Q. But if there has not been any delay there is not likely to be any heating of the corn or grain?

A. At times.

Q. That would not be the fault of the railroad company?

A. No.

Q. They would be guiltless in a matter of that kind?

A. Absolutely so.

MR. MCCONNICO: I want to ask some questions, Mr. Bell, with respect to the estimate you had in your hand. Take that paper in your hand. I have a carbon copy of it before me. I am going to ask you to file that as your exhibit No. 1, because in the former questions it was not filed. Now your first item is steamboat, $25,000, and six wooden barges at five thousand dollars apiece, making thirty thousand dollars.

A. That is correct.

Q. You figured then, I suppose, on the quantum, the per cent, or amount of profit that you could make on one tow handling six barges of grain at two cents per hundred. That is the basis of that estimate

A. That is right.

Q. You would have to make as many investments like that in tows and barges as would be necessary to move the grain up to Nashville to the amount that you had to have it to supply the trade.

A. Certainly would.

Q. Does this estimate that you have made as to the cost of the equipment, cost and maintenance, and earnings, of one tow and six barges for one year, proceed upon the theory that you have already had to spend the money necessary to put modern handling facilities on the river?

A. That is the basis on which it is figured.

Q. You would have to abandon your existing handling facilities on the rail lines and put modern handling facilities on the river front, before you could get any benefit of the two-cent rate with these tow boat lines?

A. Before I could get the full benefit of it, yes.

MR. MCCONNICO: I mean the full benefit.

JUDGE MACK: That is before he could get his stuff in at two cents.

MR MCCONNICO: I mean that. Now, after your original investment here of $55,000, in one tow boat and six barges, your next item is estimated operating expenses, and your first item under that is depreciation and maintenance, ten per cent or $5,500.

A. That is correct.

Q. Your next item is salaries, wages, supplies, etc., for two hundred days, at $100 per day, and that one item amounts to $20,000.

A. That is correct.

Q. That proceeds on the theory that you could not use that tow boat and those six barges but seven months in the year on the Cumberland River?

A. Yes sir.

Q. And that you could make four trips per month for two hundred days?

A. That is right.

Q. You count solid running time for two hundred days at the rate of one hundred dollars a day?

A. Yes sir.

Q. There are 165 days in the year when, as I understand this estimate, you have figured on that equipment being idle, and tied to the bank, and ten dollars a day for having it watched?

A. That is correct.

Q. This estimate contemplates then that you will only haul grain one way and send the boat and barges back empty each time?

A. Yes sir.

Q. And that you will not try to do any business with it in the 165 days when you would not be hauling grain with it?

A. That is correct.

Q. But you would by this estimate be spending something affirmatively to take care of it during that period of idleness?

A. Yes sir.

Q. In your next item you figure insurance on the grain in transit and on that boat and six barges?

A. Yes sir.

Q. Your next item is transfer at the Ohio River?

A. Yes sir.

Q. On the quantum of grain that you could move in twenty-eight trips with that tow in seven months?

A. That is right.

Q. Now your next item is estimated revenue, and it is this way; it reads this way; to wit: "Twenty-eight trips, 4,200 tons each at two cents per hundredweight;" that gives $47,040.

A. That is correct.

Q. That is at the rate of two cents per hundred?

A. Two cents per hundredweight.

Q. I mean two cents per hundredweight of course, and that gives you your total revenue on the hypothesis that you move it at two cents per hundredweight?

A. $47,040.

Q. Yes sir, and from that you subtract your items, of estimated operating expenses, which includes insurance and salaries, etc., all of which amount to $39,304?

A. That is correct.

Q. For the whole year?

A. Leaving a net profit of $7,736 over the two cents per hundredweight.

MR. MCCONNICO: Exactly.

JUDGE MACK: Where is your depreciation?

MR. MCCONNICO: In his operating expenses he has included ten per cent per annum for depreciation on that tow and those six barges.

MR. BELL: Yes sir.

MR. MCCONNICO: Now in that item you also include transfer at the Ohio River in your operating expense.

A. That is right; yes sir.

Q. Of course you could not get the benefit of a two-cent rate built up by such a boat line without you put enough tows and barges, on this basis, on the river to handle the business, and you would not have it available as a two-cent rate without you shifted your handling facilities to the river's edge in Nashville, and modernized it?

A. That is correct, and then after we did that we would be on the river handling river grain with the same competition on both sides of us.

Q. If they met your rate?

A. That would happen.

Q. All this it is proposed to show, and, as I understand it by these figures, is a two-cent rate on moving grain?

A. That is correct.

Q. From the Ohio River crossing up to Nashville, but before you could have that feasible you would have to put your handling facilities on the river at Nashville and stand the expense, that would mean, besides buying the tows and barges and incurring the operating expenses?

A. To be sure.

MR. ESTERLINE: I object to the attorney's stating the question and answer and the witness agreeing with the expression "To be sure."

Q. Would one tow and six barges be all the equipment you would have to put on the river, or is that only one unit of equipment?

A. Just one unit in the larger equipment.

(Reporter's Note: The following is a copy of Exhibit No. 1 exhibited and last above referred to in the above testimony.)

ESTIMATED INVESTMENT.

Steamboat	$25,000
Six Wooden Barges	30,000
Total	$55,000

ESTIMATED OPERATING EXPENSES.

1. Depreciation and Maintenance, 10 per cent		$5,500
2. Salaries, wages, supplies, &c., 200 days at $100 per day		20,000
Salaries, wages, supplies, &c., for 165 days at $10.00 per day		1,650
3. Insurance:		
Grain at 2% per annum	$4,704	
Boat and Barges	2,200	
		6,904
4. Transfer at Ohio River		5,250
Total		$39,304

ESTIMATED REVENUES.

28 trips, 4,200 tons each, at 2 cents per cwt.	$47,040
Total Estimated Revenues	$47,040
" " Operating Expenses	39,304
" " Profit	$ 7,736

MR. MCCONNICO: Any additional rate over two cents that you would figure in that estimate would mean additional profit over the amount shown by the estimate?

A. To be sure.

Q. Any work you would do with your tows and barges in the Mississippi, Ohio or Cumberland Rivers during the period of idleness would be that much more added to the profits in that estimate?

A. That is correct, and I am sure that we could employ that equipment during the time that we could not use it on the Cumberland River and bring in revenue instead of costing us ten dollars a day to lay it up.

Q. And thus increase the estimated income from your equipment?

A. Yes.

Q. I see there that you figure wooden barges, $5,000 apiece; does that mean open barges or model barges?

A. Model barges, with a covering like a houseboat.

Q. And hulls?

A. And hulls like a steamer on the Cumberland River, and hatches to spout this grain in from the top or put it in from the side through doors like a car door in a freight car.

Q. You were asked by Mr. Wimbish about statistics with respect to grain that moves into Nashville by local rail shipment and by steamboat, etc. Are there any such statistics that have been kept in Nashville or that you have been able to obtain?

A. None that I know of. I do not know that there are any such statistics. I do not know of them.

Q. I will ask you whether the country right around Nashville, Middle Tennessee, the blue grass part of Tennessee, is itself a surplus grain producing country.

A. It is, and corn is coming in from—well I will say, every month in the year, but especially from the first of November until along in the spring

months, by wagon, every day. There is not a day that there is not large numbers of wagon loads of corn on our hay market and you can see them driving around town with a large supply.

Q. Is not Middle Tennessee a great wheat country?

A. It is considered one of the greatest wheat countries in the world.

MR. NEEDHAM: I do not see what bearing this has.

MR. MCCONNICO: I am on the primary market.

MR. ESTERLINE: We have been over that.

MR. NEEDHAM: All of the grain, as I understand it, that is not covered by the rebilling privilege?

MR. MCCONNICO: I am trying to get at the quantity.

JUDGE MACK: Mr. Wimbish asked the question about the quantity and the witness said it is impossible to get statistics.

MR. WIMBISH: I did not want simply his opinion.

MR. MCCONNICO: I will ask to be permitted to ask this question. Mr. Bell, formerly grain grew in the Wabash, Ohio and Mississippi River valleys that would, if it came to Nashville at all, come by steamboat prior to the building of rail lines north and west of Nashville; is not most all that grain concentrated at the Ohio River crossing rail gateways so that you have that grain growing in those river valleys that originates at the river crossings and moves on transit privileges into the southeast? That happens, does it not?

A. Yes.

Q. And to that extent the rail lines supplant, what the steamboats formerly did, and move that grain under the transit privileges into the southeast?

A. That is right.

Q. Now I should have asked these questions on direct examination, but I overlooked it and I will ask counsel's permission that I may do it. You were the vice-president of the grain exchange; the

grain dealers of Nashville are members of that grain exchange?

A. Practically all of them, yes sir.

Q. The Nashville Grain Exchange is a Tennessee corporation, and so is the Nashville Board of Trade?

A. They are.

Q. The latter represents in an organized way the great bulk of the substantial business interests of the city?

A. Yes sir.

Q. And the Nashville Grain Exchange represents in an organized way almost all of the grain dealers and shippers at Nashville?

A. Yes.

MR. ESTERLINE: I have two more questions. In order to bring about this situation first, this river must be equipped with the elevators and these up to date modern boats to which you have referred? That must first be done?

A. Yes sir.

Q. In order then for those transportation companies to make effective their handling of the grain you and others situated like you have got to move over the river to receive it and leave your present places of business? That is correct, is it?

A. Yes, and lose the investment that we have at present in handling facilities.

Q. And, third, in order to make it effective, the railroad company must keep hands off if the rebilling privilege goes out?

A. Yes.

Q. Now you have not bought any land over there yet, have you, for wharves, have you?

A. No sir.

Q. You do not know what the railroad companies will do if this privilege goes out?

A. No, we do not know whether they will put us on a parity of any device or not, but we do know and I am safe in stating that, that they will equalize the rates, with any rate that we may make, through the

gateways to the southeast if not through Nashville.

Q. But you do not know what they will do?

A. No.

Q. Certainly not; and the nearest you have got to equipping this river is the estimate you have made for the purposes of this case?

A. It certainly is; we would not figure on constructing it unless it was a matter of life and death with us because we would be making an investment there that we cannot hope will be permanently profitable.

MR. NEEDHAM: I understood you to say a few moments ago that you had one elevator at the river that would take the grain out of the boat and put it into the car, that you could switch it to your present elevator at about one cent per bushel expense; was that right?

A. One cent per hundred.

MR. NEEDHAM: I mean per hundred.

MR. BELL: Yes sir.

Q. You could do that?

A. Under the present tariff of the Louisville and Nashville Terminal Company.

Q. The switching company?

A. The switching charge is one cent per hundred across from one side of town to the other.

Q. It would not follow, then, that you would have to give up your present elevator on the river, where now located? You could use that in connection with the others by paying the one cent switching charge?

A. By paying the one cent switching charge, but could not do any business handicapped with one cent per hundred that our competitor going through from the Ohio River gateways to the southeast would not have to pay. The grain business is handled on such a close margin that one-half a cent per hundred would absolutely prohibit us from doing business.

Q. You mean that a grain dealer handling and shipping it direct—

A. No, I mean the Illinois Central, the Mobile and

Ohio on the west, the Southern Railway, the Cincinnati Southern, and through the Virginia City gateways on the east, would immediately make a rate that would meet any through rate we built up with the river as one link from the west and by the local lines south, and if the Louisville and Nashville and the Nashville, Chattanooga and St. Louis did not also meet that through business they would have poor people at the head of it.

Q. I quite understand you on that proposition, but what I was aiming my question at was the necessity of your giving up the present elevators on the railroad if you could transfer from the new elevator to be erected on the river to your present elevators for one cent per hundred, you could still continue to use your present elevators at an expense of one cent in addition to the river rate, could you not?

A. Yes, but the one cent per hundred is just as prohibitive as five cents per hundred.

Q. But it would still make the rate into Nashville to your present elevator something about three cents on your estimate?

A. Whatever that rate might be, we will say it was three cents, whatever it might be, it would be one cent per hundred higher than the rates we would have to compete with.

JUDGE MACK: Why?

A. Because, your Honor, the lines from the Ohio River gateways into the southeast would meet this rate of three or two cents on the river.

JUDGE MACK: They would not meet a rate they did not have to meet, would they?

A. No sir.

JUDGE MACK: And no rate other than the three cents?

A. They would not meet the other one cent, unless they had to.

Q. What you have not made clear is, could anybody get the advantage of that two-cent rate without also paying the one-cent expense?

A. They could build on the river.

Q. That is, such a man would get the two-cent rate?

A. Sure.

Q. And then get the rate without the one-cent expense?

A. To be sure.

Q. And therefore the roads would have to meet the combination of two cents?

A. Exactly what I said.

Q. And the dealers not in the same favorable location could not compete with the man who has an elevator on the river?

A. That is right, your Honor.

MR. NEEDHAM: The giving up of your elevator on the railroad then would be simply because you could not pay the one cent switching charge from the river elevator to your own elevator? Is that it?

A. It would be to that extent on that movement; we would have to give it up because we could not do business against the man with a business on the river.

Q. But if nobody builds such a plant the question would not arise?

A. But there is no doubt such a thing would occur. One elevator is already on the river and there would be others. It would look like a camp meeting down on the river, the real estate agents showing them locations.

MR. NEEDHAM: Well, if that condition should come about that you spoke of that the railroads would meet the rate and that traffic would go back to the railroad, it would be to your advantage decidedly to retain your elevator on the river, would it not?

A. Yes sir, we would stay on the river if the railroads, for us locally, would continue to give us the same arrangement for handling that we have now on our present location. If they did not then we would have to give up our river warehouses located on the banks of the river and go back to our all rail ware-

houses unless we could get the same rail facilities on the river.

JUDGE MACK: How many more witnesses?

MR. MCCONNICO: Only one more witness and it is cumulative. I do not feel like burdening the court and will make it short.

JUDGE MACK: How many have you, Mr. Brandeis?

MR. BRANDEIS: One; it will not take very long.

MR. CALLAWAY: One for the Nashville, Chattanooga and St. Louis.

Further this deponent saith not.

(The hearing was adjourned until evening, 7:30 o'clock.)

(Tuesday Evening Session, Nov. 28, 1911.)

R. H. MCCLELLAND.

(The witness, R. H. McClelland, was sworn by Judge Mack.)

MR. MCCONNICO: May it please your Honor, Mr. McClelland would be duplicating and corroborating proof that is already in and I will shorten this matter that is getting somewhat tedious by restricting my questions to only one or two points.

JUDGE MACK: Very well.

MR. MCCONNICO: Mr. McClelland, you are in the grain business at Nashville?

A. Yes sir.

Q. How long has your concern been in the grain business at Nashville?

A. Since 1876.

Q. How long have you been with that concern?

A. 1906.

Q. What is the name of your concern?

A. J. H. Wilkes and Company.

Q. Does your concern own its own warehouse?

A. Yes sir.

Q. Is that warehouse located exclusively on the rail line?

A. Yes sir.

Q. And not on the river?

A. No sir.

Q. In what territory do you sell?

A. In Carolina and southeastern territories.

Q. Then you sell as I understand throughout southeastern territory and Carolina territory?

A. Yes sir.

Q. I will ask you to state what is the nature of your business with respect to its being car load or less than car load?

A. Both.

Q. Is the larger part of your business less than car load or car load?

A. Yes.

Q. Sir?

A. Yes.

Q. The larger part, as I understand it, is less than car load?

A. Less than car load, about 75 per cent of it.

Q. And that business in less than car load quantities you ship to points throughout this territory on the basis of through rates from the Ohio River crossings to points of destination in that territory?

A. Yes sir.

Q. Do you usually ship to jobbers or retailers?

A. Retailers.

Q. If the reshipping practice at Nashville were abolished and the rates into and out of Nashville were maintained, state what your concern would do.

A. Go to Cairo.

Q. Sir?

A. Go to Cairo.

Q. That would involve abandoning your present plant?

A. Yes sir.

Q. And a new investment in Cairo?

A. Yes sir.

MR. ESTERLINE: This goes in subject to the general objection, your Honor?

JUDGE MACK: Yes.

MR. MCCONNICO: From Cairo, would you then on the same rate you now have from Nashville do a less than car load shipping business to retailers throughout southeast and Carolina territory, and could you do that business from that place in the same way you now do it from Nashville?

MR. WILBISH: I should like to ask how does that illustrate the power of the Commission to make the order?

JUDGE MACK: I do not see.

MR. MCCONNICO: I understand one of the legal tests of an undue discrimination is this: strike down the thing complained of as a discrimination and would any change or benefit result to the points making the complaint? This testimony but gives point to the fact, may it please your Honor, it ought to be in the record, that from the Ohio and Mississippi River crossings any and all shippers, whether in car load or less than car load lots, can do throughout southeast territory what can now be done from Nashville, and that if the thing complained of were stricken down at Nashville it would but mean a transfer of the business to points that we contend are exactly similarly situated with Nashville; would mean a diversion of the traffic to those points without aiding the points making the complaint and would be destroying the grain interests at Nashville with no benefit to the points making the complaint.

JUDGE MACK: That would make no point. The Atlanta dealers can do their business in these Ohio River points if they want to move their business, but they want to stay in Atlanta, and the Atlanta people want to stay in Atlanta and do their business, so they say they should be permitted to do it if you are. Your argument is they can move away

and do it elsewhere. I do not see that that helps the point.

MR. MCCONNICO: My friend Wimbish has the opinion—it seems a "favorite argument" of his, if he will permit me to indulge the pleasantry, that if you strike down this reshipping business at Nashville, although the Ohio points can do the same business he says they are not so active in drumming the small trade. I just wanted to let him know that if the covey was flushed and scattered at Nashville there would be small business surely drummed in the southeast from the banks of the Ohio River.

MR. WIMBISH: I accept the apology of the counsel and leave the record as it stands.

MR. MCCONNICO: You are a member of the Nashville Grain Exchange?

MR. MCCLELLAND: I am.

MR. MCCONNICO: That is all.

(Reporter's Note: Mr. McConnico asked permission, which was granted by Judge Mack, later on in the hearing, to have a stipulation and three affidavits copied "after the testimony of my last witness * * * just before Mr. Barham's testimony." The stipulation and affidavits follow herewith. (See page of this transcript.)

IN THE UNITED STATES COMMERCE COURT.

No. 47.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *Petitioners*, and the NASHVILLE GRAIN EXCHANGE AND NASHVILLE BOARD OF TRADE, *Intervening Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*, INTERSTATE COMMERCE COMMISSION AND W. S. DUNCAN & COMPANY, *et al.*, *Intervening Respondents*.

STIPULATION.

It Is Hereby Stipulated and Agreed, By and between the parties to the above entitled cause, by their respective counsel, that the Nashville Grain Exchange and Nashville Board of Trade, Intervening Petitioners, may offer as evidence in the above entitled cause the original affidavits of J. H. Wilkes, G. W. Asheraft, S. S. Kerr, Aleck. S. Hard, and George Doubleday, or duly certified copies thereof, filed in the case of *W. S. Duncan & Company, et al. v. Nashville, Chattanooga & St. Louis Railway, et al.*, No. 1698, Interstate Commerce Commission, in lieu of the personal attendance and oral examination of the witnesses, and that no objection will be made thereto as to the manner and form in which the said testimony is offered.

It Is Further Stipulated and Agreed, That when and as the said affidavits or duly certified copies of the same are so offered, the respondents and intervening respondents, and each of them, may object to the said affidavits, or to any of them, or to any part of the same, as incompetent, irrelevant, and immaterial to any issue in said cause, or on any other ground except as to the manner and form in which the same are offered.

It Is Further Stipulated and Agreed, That in the event objections to the receipt in evidence of the affidavit of said George Doubleday are overruled and the same is received in evidence, that the party or parties offering the same will, upon request of the respondents, or any of them, upon such party or parties offering the said affidait, or their counsel, produce in Washington, D. C., the said George Doubleday for cross-examination as to the matters and things in said affidavits deposed or any part of the same, at such times and place as the court may direct before the final hearing hereof. And in the event of the failure so to produce the said George Doubleday, the said affidavit and each and every part of the same, at such time and place as the court may direct

This stipulation is made and entered into on the representation of the counsel of the said intervening petitioners that each of the said affiants is now living.

(Signed) R. Walton Moore, M. P. Callaway, Solicitors for Nashville, Chattanooga and St. Louis Railway, Petitioners.

(Signed) Albert S. Brandeis, Solicitor for Louisville and Nashville Railroad Company and Nashville, Chattanooga & St. Louis Railway, Petitioners.

(Signed) K. T. McConnico and Lee Douglas, Counsel for Nashville Grain Exchange and Nashville Board of Trade, Intervening Petitioners.

(Signed) Blackburn Esterline, Special Assistant to the Attorney-General.

(Signed) Chas. W. Needham, Solicitor for Interstate Commerce Commission.

(Signed) William A. Wimbish, Solicitor for W. S. Duncan & Company, *et al.*, Intervening Respondents.

INTERSTATE COMMERCE COMMISSION.

Washington.

I, JUDSON C. CLEMENTS, Chairman of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the affidavit of J. H. Wilkes filed as exhibit interveners No. 1 to the testimony taken before said Commission at Washington, D. C., on September 27, 1910, in the case of W. S. Duncan & Company and others against the Nashville, Chattanooga & St. Louis Railway and others, docket No. 1698, the original of which is now on file and of record in the office of said Commission.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name, and affixed the seal of the Commission, this 25th day of November, 1911.

(Signed) JUDSON C. CLEMENTS,
Chairman.

(Seal.

EXHIBIT, INTERVENER NO. 1.

AFFIDAVIT OF J. H. WILKES.

Affiant being duly sworn states:

My name is J. H. Wilkes; my residence White Bluff, Tenn., near Nashville. I am 72 years of age. I was in the grain business about 30 years beginning about 1875.

I have bought large quantities of corn and wheat on the Wabash River and on the Ohio River, and have shipped the same to Nashville by railroad; also to a limited extent by river.

I have bought corn and wheat in the Wabash Valley, and shipped the same to Henderson or Uniontown, Ky., where it was put on the railroad and brought to Nashville. My recollection is that the rate via boat and rail was somewhat higher than the

direct boat rate, and that the railroad equalized the rate where there was a difference.

The railroad company back as far as 1875 had its soliciting agents at Nashville soliciting business from the grain men; and as an inducement to secure the traffic offered to equalize rates with the direct boat lines, and also offered better facilities for handling the grain at Nashville. The facilities to which I refer were sidetrack facilities, whereby the grain was placed right at my warehouse upon arrival. Other inducements to the handling of grain by rail was that the grain arrived in better condition; and if there was any damage or loss in weight, the railroad company was here to settle claims promptly, whereas with the boats it was more difficult to get claims settled.

I think at the time that I began business in Nashville, there were five grain firms located here. B. S. Rhea & Son were the largest handlers of grain through Nashville. They handled practically their entire business by boat to Nashville and Johnsonville, at which points there were elevators owned by the railroads, and of which they were given the use free of charge.

While I bought grain occasionally as far west as St. Louis, their territory to which I looked for a supply was the Wabash Valley and the Ohio River, and I kept a man there constantly to buy grain for me. Mr. Rhea also kept a man at Shawneetown to buy grain in the Ohio and Wabash Valleys.

At that time the principal points in the southeast and south to which I shipped were Macon, Augusta, Charleston, Savannah, Wilmington, Spartanburg, Greenville, S. C., Columbus, S. C., Anderson, S. C., Moultrie, Ga., West Point, Ga., Montgomery and Selma, Ala. There was no reshipping from Nashville to Meridian or points west thereof at that date, and I regarded Meridian as the "dead" line.

Mr. Rhea had quite a trade at Atlanta for certain

kinds of corn of which he made a specialty; and he was considered the largest dealer and boat owner in the trade.

The grain which was purchased by dealers located at the southern and southeastern points which I have named was distributed by them to points within a radius of say 50 miles from each place. At that time, I heard no complaint as to reshipping practices not being extended to these points. The southeastern territory was regarded as a consuming territory.

There are now more than 50 grain firms located at Nashville, composed principally of men who have grown up in the grain business.

Mr. Rhea endeavored to control the grain trade of the Ohio and Wabash Valleys, both as a grain dealer and as a boat owner, and the railroad company in order to get the business had to compete with him in both capacities. In other words, they had to make rates which would equalize not only Mr. Rhea's prices on grain but the rates that his boats could afford to make.

The firm of B. S. Rhea & Son was in business prior to the time that I engaged in the grain business, and the junior member of that firm still continues the business.

The condition of my health is such that I am not physically able to make a trip to Washington.

(Notarial seal.) (Signed) J. H. WILKES.

State of Tennessee, County of Dickson.

Personally appeared before me, J. W. Baker, a Notary Public in and for the State and County aforesaid, the above-named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed the same in my presence. Witness my hand and seal at White Bluff, Tenn., this 22d day of September, 1910. My commission expires January 17, 1914.

(Signed) J. W. BAKER,
Notary Public.

INTERSTATE COMMERCE COMMISSION

Washington

I, JUDSON C. CLEMENTS, Chairman of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the affidavit of G. W. Ashcraft filed as exhibit interveners No. 2 to the testimony taken before said Commission at Washington, D. C., on September 27, 1910, in the case of W. S. Duncan & Company and others against the Nashville, Chattanooga & St. Louis Railway and others, docket No. 1698, the original of which is now on file and of record in the office of said Commission.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of the Commission, this 25th day of November, 1911.

(Seal) (Signed) JUDSON C. CLEMENTS,
Chairman.

EXHIBIT, INTERVENER NO. 2.

AFFIDAVIT OF G. W. ASHCRAFT.

Affiant being duly sworn states:

I am 75 years of age, and reside in Nashville, Tenn. I have been on the river since I was 16 years of age, running between Louisville and Henderson for a considerable part of the time.

In 1856, I ran as clerk on a boat from Louisville to New Orleans. About 1858, I commenced clerking in the Louisville and Henderson trade, in which I remained three or four years. In 1863 and 1864, I was Master of the Steamer Mercury, in the Government employ running between Louisville and Nashville, and in the Tennessee River also. The Mercury was chartered by the Government for purposes of war. The traffic carried by the Mercury for the Government consisted of commissary stores, corn, hay

and grain. The grain was obtained on the Ohio River, and some of it carried to Nashville, and some of it carried by the Tennessee River to Eastport. During this same time, there were hundreds of other boats handling grain from Ohio River points to Nashville; and also by the Tennessee River. Nearly all of the grain came from Ohio River and Wabash River points. To give you an idea of the number of steamers bringing freight to Nashville off the Ohio River, the closest landing that I could at times make was at the old race track, which was two miles from the upper wharf. There were two wharves at Nashville, the upper and lower wharf. I have seen at a given time as many as four or five steamboats lying abreast at the wharf unloading, and other boats four or five deep, awaiting their turn to be unloaded at the wharf. I have seen this condition at both of the wharves at Nashville.

In January, 1871, I took charge of the coal mines at De Koven, Ky., a point located on the Ohio River about sixty miles above the mouth of the Cumberland River. It was the custom of the boats plying on the Ohio River and the Cumberland River to stop there for coal, and in that way I became familiar with the general character of their traffic and their points of destination. I was manager of the coal mine for five years, and during that time, the Cumberland River boats and the Tennessee River boats went up the Ohio River and the Wabash River for grain, which they brought back by the mines where they coaled, and they were loaded down with this grain, a majority of them destined to Nashville. Some of them went to Johnsonville, Tenn., where they had the same river rate.

During the five years I was manager of the coal mine, there were many transient boats, including tow-boats, when there was a heavy grain season that handled exclusively this grain business from the Ohio and Wabash River to Nashville, in addition to the regular boats.

When I left the mine in 1875, I came to Nashville, and in November of that year, I began service as a clerk in the upper Cumberland River. I remained there for two years, during which time I was employed by a line of boats, consisting of four or five steamboats. These carried a great deal of grain from upper Cumberland points to Nashville. During that time, the grain merchants of Nashville had a custom of sending large quantities of empty sacks, which the boats put off for the shippers at various landings, where we got grain. It was the understanding that the grain was to be loaded by shippers and shipped to Nashville merchants, who furnished these sacks. The Nashville merchants employed a man, who was on the boat continuously to solicit the grain business for them, and he supplied sacks to every one who wanted them. A similar custom or practice prevailed on the lower Cumberland.

When I first quit the Upper Cumberland, I was in the employ of Captain Ryman, and he put me on the Silverthorn, one of the boats running from Nashville to Evansville, Ind. During the season of 1878-79 I remained on the Silverthorn. During the season of 1880-81, I was on the B. H. Cooke, running from Nashville to Evansville. During this period, we handled a great deal of grain from Ohio River points to Nashville, which constituted practically three-fourths of the cargoes. The Silverthorne and the B. H. Cooke made one trip a week each between Evansville and Nashville. The Nashville & Cairo Packet Company and the Nashville & Evansville Packet Company were then operated under one management. There were two boats running between Nashville & Cairo, and one in the Nashville and Evansville trade, and each one of them made one trip a week. The boats which ran from Nashville to Cairo handled principally grain. The two boats had a capacity of about 400 tons each. It was the custom of boats running from Nashville to Cairo, in event they did not have a full cargo at Cairo to go as high as

Shawneetown, Ills., and other upper Ohio River points, and get a load of grain for Nashville. This was very frequently the case. During this time, there were transient boats and tow-boats, which handled grain exclusively from Ohio River points to Nashville, in addition to the packet lines.

During the 50's and up to the beginning of the Civil War there were regular packet lines plying the Ohio, Mississippi and Cumberland Rivers, between Pittsburgh and Nashville, Cincinnati and Nashville, Louisville and Nashville, Memphis and Nashville, St. Louis and Nashville and New Orleans and Nashville.

As late as the early 70's, the railroad situation in the south was such that the competition of the railroads for the business was not felt by the steamboat interests, and until that time, Nashville, Louisville and other river points were dependent upon river transportation.

When the Illinois Central Railroad began shipping grain into Cairo, I have seen the time when their yards were full of cars loaded with grain, hay and flour, awaiting the arrival of boats to carry the traffic down the Mississippi and up the Ohio and Cumberland Rivers. During my experience in the Ohio River in 1871, I have seen as many as seven or more boats, ranging in capacity from 1600 to 3000 tons each, loading at the Cairo wharf chiefly with grain and flour destined to New Orleans, Memphis and Nashville. The Nashville grain merchants during the early 70's had representatives or brokers at Cairo and other Ohio River points purchasing this grain and shipping it to Nashville by river. Nashville as far back as I can remember has been a concentration point for the marketing of grain produced on the Ohio, Cumberland, Wabash and Mississippi Rivers.

During the early 70's, I recall that William Raum, who was a large planter and buyer, J. E. Ranklin, and L. Ruffner—all of them Evansville capitalists—Brandeis & Crowford and H. W. Verhoeff of Louis-

ville, bought corn and wheat both in the Ohio and Wabash Valleys, which they shipped direct from points of purchase to such markets as Parkersburg, W. Va., Nashville, Tenn., Memphis, Tenn., and New Orleans. At that time, the grain which moved to Louisville and to Evansville was for local consumption only. There was no reshipping of grain from Louisville or Evansville to the southeast, so far as I know. The traffic was carried by boat service as far in every direction as that service was available to reach the termini of railroads which were in position to carry the traffic on to its destination either in the East or Southeast.

As late as 1889, I operated a small boat in the Cumberland River, which brought grain from the Wabash to Nashville.

(Signed) G. W. ASHCRAFT.

State of Tennessee, County of Davidson, ss:

Personally appeared before me, C. R. Cockle, a Notary Public in and for the State and County aforesaid, the above-named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed the same in my presence.

Witness my hand and seal this 22nd day of September, 1910.

My Commission expires Oct. 17, 1911.

(Signed) C. R. COCKLE,

(Notarial seal.) *Notary Public.*

INTERSTATE COMMERCE COMMISSION,
Washington.

I, JUDSON C. CLEMENTS, Chairman of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the affidavit of S. S. Keer filed as exhibit interveners No. 3 to the testimony taken before said Commission at Washington, D. C., on September 27, 1910, in the case

of W. S. Duncan & Company and others against the Nashville, Chattanooga, & St. Louis Railway and others, docket No. 1698, the original of which is now on file and of record in the office of said Commission.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of the Commission, this 25th day of November, 1911.

(Signed) JUDSON C. CLEMENTS,
Chairman.

(Seal.)

EXHIBIT, INTERVENER NO. 3.

AFFIDAVIT OF S. S. KERR.

S. S. Kerr, being duly sworn, states as follows:

My name is S. S. Kerr, and I reside in Nashville, Tennessee. I have been engaged in the grain business about twenty years. I have frquently purchased grain at Ohio River crossings, and in the vicinity of said crossings. I operate in the vicinity of Shawneetown and in tributary territory, in connection with the Shawneetown Elevator Company in the purchase and shipment of grain to the southeast. Since being in the grain business I have frequently chartered boats for the transportation of grain from this territory to Nashville, and occasionally have shipped the grain through to the southeast. The reason why I shipped the grain I speak of by boat was because I could get it carried cheaper to Nashville by boat. It originated at river landings, and might have been carried by a short boat haul to Evansville or other Ohio River crossing, and thence shipped by rail to Nashville, but it was carried by direct boat haul all the way cheaper than it could have been carried by boat and rail.

The Louisville & Nashville Railroad reaches Shawneetown, and I have shipped grain frequently from Shawneetown to Nashville by river, because I could do so cheaper than I could by the L. & N. R. R.; the rate by boat to Nashville being six cents per hundred pounds, whereas the rate via the Louisville and Nash-

ville Railroad to Nashville was ten cents per hundred. The insurance was about 3-10ths of a cent per hundred pounds. I have during this present season purchased grain at Ohio River landings between Uniontown, Ky., and Paducah, and shipped a part of this grain via Nashville to southeastern territory. Mr. I. T. Rhea, is a much larger reshipper of grain to the southeast and to Carolina territory than I am. The Tennessee Central Railroad Co. has an incline to the water's edge on the Cumberland River at Nashville, which is accessible to all boat and barge lines plying on said river. I have handled most of my grain brought by river, at this incline of the Tennessee Central, for the reason that there is no transfer charge, when loaded on cars to be shipped to the south and southeast; whereas at the Ryman elevator on the Louisville & Nashville tracks, there is a charge for transfer of about one cent per hundred which we have to pay. The rate from the Tennessee Central incline to Atlanta would be the local rate published by the Nashville, Chattanooga & St. Louis Railway.

I have handled corn frequently out of the Wabash River to Nashville at a rate of 7 cents per hundred to Nashville this includes loading and unloading but not insurance. The insurance I think would be about ½ cent per hundred pounds on this grain. The Louisville & Nashville Railroad crosses the Wabash River near where these shipments originated. The lower Wabash has always been one of the heaviest corn producing sections, and much of the grain raised there has been shipped to the southeast. It goes by river to Henderson, Ky., Uniontown, Ky., Mt. Vernon, Ind., and Paducah, Ky., from which places it is reshipped by rail to the south and southeast.

I have also frequently shipped grain from about 25 miles north of Cairo on the Mississippi River and also about 25 miles south of Cairo, to Nashville, for rates of about 9 cents per hundred pounds, exclusive of insurance.

(Signed) S. S. KERR.

State of Tennessee, County of Davidson.

Personally appeared before me, E. R. Cockle, a Notary Public in and for said State and County, S. S. Kerr, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal, this 22 day of September, 1910. My Commission expires the 17 day of October, 1911.

(Signed) C. R. COCKLE,
Notary Public.

(Notarial seal.)

CHARLES BARHAM.

(The witness, Charles Barham, was sworn by Judge Mack.)

MR. CALLAWAY: Mr. Barham, what position do you occupy with the Nashville, Chattanooga and St. Louis Railway?

A. I am General Freight Agent of the Nashville, Chattanooga and St. Louis Railway and of the Western and Atlantic Railroad.

Q. How long have you been connected with the Nashville, Chattanooga & St. Louis Railroad?

A. I have been connected with the company fourteen years.

Q. Matters of rates, rate adjustments, are or are they not within your jurisdiction as General Freight Agent of that company?

A. They are, subject to the direction of the vice-president in charge of traffic.

Q. Are you familiar with the transit arrangements and reshipping arrangements as they are in effect at Nashville and as they are effective at points on the Nashville, Chattanooga and St. Louis Railway?

A. I am.

Q. Mr. Barham, to get the record straight, describe the Nashville, Chattanooga and St. Louis

Railway system as it now exists, giving a brief history of its development.

A. Would your Honor care for this map? It happens to be a geographically correct map. (Witness hands map to Judge Mack.) The Nashville, Chattanooga & St. Louis Railroad operates in the states of Tennessee, Alabama, Georgia and Kentucky, with its own and leased lines, comprising 1,230 miles, of which 744 miles are south and southeast of Nashville and 486 miles west, northwest and southwest of Nashville. The original or parent company was chartered in 1845 as the Nashville and Chattanooga Railroad. Similar charters were obtained in Georgia and Alabama because the 151 miles between Nashville and Chattanooga penetrated those states for a few miles; the Shellyville Branch, eight miles, was built at the same time as the main stem, and the Jasper Branch, twelve miles, and running off from Bridgeport was built before the Civil War. The lines I have described represented our mileage until after the war period. After the war period, and in 1869, we leased for a term of eighteen months from the state of Tennessee, the Nashville and North Western, which, with a little road known as the Hickman and Obion, formed a line from Nashville to Hickman, Kentucky. Two-thirds of the stock of the Nashville and North Western was purchased by us under a decree of the Chancery Court at Nashville in the fiscal year 1871-1872, and a little bit later the remaining one-third was purchased, giving us the entire ownership of that property. In 1890 we leased the Western and Atlantic Railroad from the state of Georgia, by whom it is owned and by whom it was built. The Western and Atlantic extends from Atlanta to Chattanooga; the lease was for a term of twenty-nine years, and of this eight years are yet unexpired. We leased in 1896 for a term of ninety-nine years certain properties known as the Paducah, Tennessee and Alabama Railroad and the Tennessee Midland Railway, extending from Mem-

phis, Tenn., crossing our main line at Hollow Rock Junction and reaching Paducah, Kentucky. The other branches of the road were built or purchased at various times and all the properties are owned outright by us with the exception of the Western and Atlantic and the Tennessee Midland and the P. T. & A. The Nashville and North Western Railroad is quite an old corporation; it was chartered in 1851. That is the line from Nashville west, but its builders encountered quite a lot of financial trouble and at the outbreak of the Civil War the line was not complete. It was completed by the United States Government between Johnsonville and Nashville, the Government having a large base of supplies on the Tennessee River at Johnsonville. As I have said, after the war the line was completed, went into bankruptcy and was finally purchased by us, the final stock purchase being in 1875. The name of the Nashville and Chattanooga Railroad, the original corporate name, was changed by a decree of the Chancery Court of the city of Nashville after the purchase of the Nashville and North Western Railroad, or in 1873, but that does not mean that the Nashville and Chattanooga Railroad encountered any financial trouble; as a matter of fact, the original corporation has always remained; the original stock holds good. There has never been a default in the interest payments of the Company, and it is today the corporate creature originally created by the states of Tennessee, Alabama and Georgia.

Mr. McConnico: When finished from Nashville to Chattanooga, as I understand you, the Nashville and Chattanooga, as it was then known, was the first line of railway affording a direct way of transportation between the Ohio and Mississippi River valleys to the west and southeast?

A. I have a map here, it is on rather a larger scale than some of those that have heretofore been used.

Q. To save time, Mr. Barham, I will just get you to state what other lines of railway were in operation in the south and southeastern territory at the

time the Nashville and Chattanooga was built from Nashville to Chattanooga.

A. The Nashville and Chattanooga Railroad was actually built from Nashville to Chattanooga. It was not built from Chattanooga to Nashville. It was completed in February, 1854, by the completion of the bridge across the Tennessee River at Bridgeport, and trains were first operated in February of that year. At this completion in 1854, the only railroads south of the Potomac and south of the Ohio and east of the Mississippi River were the lines shown on this map in red ink.

Q. Which are they?

A. In what is now known as southeastern territory the only rail lines were a line from Chattanooga to Atlanta, the State Road, now a part of our system, the line from Atlanta by way of Augusta to Charleston, comprising what is now known as the Georgia Railroad and a part of the Southern Railway; lines now known as the Central of Georgia, extending from Savannah via Macon to Atlanta; with a few miles of railroad from Montgomery, without any connection, as shown here, just a little line built for some purpose unknown to me. There were no lines between the west—for example, Chicago, Cincinnati, etc.—and the east; it was before the building of the Baltimore and Ohio or the building of the Pennsylvania Railroad or any of the trunk lines. There was no line from Cincinnati, from Louisville, from Evansville, from Henderson, from Memphis, from Hickman, or in fact any point on the Ohio or Mississippi Rivers.

Q. Now state briefly, Mr. Barham, the purpose for which the Nashville, Chattanooga and St. Louis was projected, and the results expected to be accomplished, giving the sources of information?

Mr. Needham: What bearing has this on the issue?

Judge Mack: I suppose it is to show that Nashville is a primary point.

MR. CALLAWAY: Indeed yes.

MR. WIMBISH: Suppose it was fifteen years ago; how can that illustrate this?

MR. NEEDHAM: I simply raised the point to save time.

MR. CALLAWAY: Inasmuch as your Honor ruled certain lines of testimony were admissible, I promise nothing cumulative any more than possible, but there is some history necessary from the railroads' side, and other witnesses have represented the grain interests.

JUDGE MACK: All right.

MR. BARHAM: The Nashville and Chattanooga road was constructed for the purpose of connecting the south with the western territory at the nearest available point on a navigable stream. The preliminary survey of our line was made by no less a man than John Edgar Thompson, afterwards prominently connected with the Pennsylvania Railroad and heavily interested in iron propositions in Pennsylvania, and well known to everyone. With his report to the Board of Directors giving an outline of his survey was an estimate of the cost of constructing the line dated February, 1847. He says, "That there will be a connection between the South Atlantic coast and the great west at an early period. No one acquainted with the extent and importance of the interests to be beneficially affected by it can for a moment doubt; and that the route of your road is the most advantageous for such a connection is equally clear. Through the Cumberland it brings the mouth of the Ohio, the heart of the west, more than seven hundred miles nearer the Atlantic than by any of the present avenues of commerce. An advantage which must claim for the line, an advantage from all the travel and transportation of the products and consumption of the Mississippi Valley."

Q. You were reading from the—

JUDGE MACK: He said what it was—Thompson's Report.

MR. BARHAM: If necessary, I will say that this volume—

JUDGE MACK: Nobody is disputing anything yet; it is not necessary.

MR. BARHAM: (Continuing reading): "On January 11, 1847, by the request of the House of the Legislature of the State of Tennessee, Mr. V. K. Stevenson, who afterward became the first president of the Nashville and Chattanooga Railroad, addressed the Legislature with regard to State aid for this new line."

JUDGE MACK: I confess I do not see the bearing in that Mr. Thompson has only said what you said. It does not strengthen it.

MR. CALLAWAY: Because these reports are the highest evidence obtainable of what those conditions were then.

JUDGE MACK: But if there was no dispute?

MR. CALLAWAY: Counsel has disputed them and will dispute. We have never been able to get them to stipulate anything after months of diligent effort. Therefore we undertook to prove our case as we thought it necessary to be presented.

JUDGE MACK: But if you let them down easy now, so they are not kicking as hard as before, what is the use of taking up so much time.

MR. CALLAWAY: I do not know it has ever been permitted here.

JUDGE MACK: Are you going to offer any evidence against its having been a primary—

MR. WIMBISH: Not the slightest in the world. I am willing to stipulate Thompson made that report; that it was true at the time.

MR. CALLAWAY: He stipulates as far as that man said?

JUDGE MACK: No, the facts that he said; not only that he said it.

MR. CALLAWAY: That is true. We wish to go one step further. These reports were intended to show the claimants' business then. And furthermore, the

business we undertook to conserve when we put in reshipping. It goes to the heart of the case. Witnesses heretofore not always having exact information have stated facts in regard to it which are true except from the standpoint of this witness. We have the exact facts.

JUDGE MACK: Let the witness state the facts. What is the use of going through the material on which he bases his knowledge as long as they do not object?

MR. CALLAWAY: We are satisfied if he can refresh his memory.

MR. ESTERLINE: We object to its relevancy of course.

MR. BARHAM: Undoubtedly the first objects of the road were those described by Mr. Thompson and in the extracts that I had intended to read from speeches and reports made by our first president, Mr. Stevenson, one of these was to connect the west with the south at the nearest available point situated on a navigable stream. There was no expectation, so far as these reports show, at that time to extend a line of railroad west of the city of Nashville but to depend upon the Cumberland River at Nashville for a connection and by that route; first, to divert an enormous amount of food products, principally grain, at that time exported from New Orleans; second, to carry corn into the south Atlantic states which Mr. Stevenson describes as the four great cotton and rice growing states. Mr. Stevenson shows that at that time grain was worth in Tennessee 20 cents per bushel; that it was worth in South Carolina $1.00 per bushel. He says that corn was moving from Nashville via the Cumberland River, down the Mississippi River, through the Gulf of Mexico, around Florida, up the coast, and by railroads into the interior, and when it reached its destination was no further from the point of production than the railroad haul from the southeastern coast. Our reports show that the city of Charleston was inter-

ested to the extent that it subscribed $500,000 to the building of this road; that the Georgia Railroad subscribed $250,000; that the city of Nashville subscribed $500,000; and that the State endorsed its bonds to the extent of one and a half million dollars; that it was something more than a private enterprise, but a great public undertaking to provide a new and badly needed channel of commerce; that it was so built, and that we reached Nashville with this line; and, shortly thereafter, the Civil War occurred; that the road was badly crippled although it was not bankrupt by the war. It shows that all the accrued interest during the war period was paid after the war was ended. Immediately thereafter the Nashville & Northwestern was completed. Our Board of Directors at once saw that it was the logical connection for the Nashville & Chattanooga road and took steps to acquire it, and did so acquire it. After its attainment—

JUDGE MACK: Let me interrupt you a moment. When did you say that road to Hickman was projected?

A. It was chartered during 1851; used by the United States Government during the war; finished after the war; purchased by us in 1872, two-thirds of the stock.

JUDGE MACK: You are answering more than I asked you. I thought you said 1851, and that is why I wanted to ask, before you got any further, if that road was projected from Nashville to Hickman in 1851.

A. From Union City to Nashville.

JUDGE MACK: Where is Union City?

A. Fourteen miles from Hickman.

JUDGE MACK: I see. Well, when was your road projected, in 1847?

A. Chartered in 1845.

JUDGE MACK: And began to be built when?

A. Practically in 1847.

JUDGE MACK: And finished in 1854?

A. Finished in 1854.

JUDGE MACK: You said that at the time your road was projected and built that it was supposed that all the connections north and west would be by water. Does the fact that the Nashville & Northwestern was projected in 1851 in any way affect that statement?

A. No sir; because our road was projected at least six or seven years before the charter of the Northwestern road was taken out.

MR. CALLAWAY: In fact, do not the reports to which you have had access show that the tonnage that was intended to be carried over that line was expected to be brought in by water and concentrated at Nashville in these various river valleys?

A. No reference whatever is made in our annual reports, I mean at the beginning, to any, even contemplated, rail connection.

JUDGE MACK: That is the only point I wanted to ask about.

A. I would like to add to what I have already said that the rails used in building the Nashville & Chattanooga Railroad came from England via the port of New Orleans, up the Mississippi River and up the Cumberland River to the city of Nashville. The first engines used by the Nashville & Chattanooga Railroad were built at Cincinnati and brought by river to Nashville. In 1860, that was immediately before the Civil War, I find the first detailed statement of the traffic handled by the Nashville & Chattanooga road. The earnings before that time are merely given in dollars and cents and do not indicate on what commodities they were earned. It is stated, first, that through freight is described as that which passes over the entire length of the Nashville & Chattanooga road and going to connections at Chattanooga. During the fiscal year 1859-1860, we handled, coming from points beyond or west of Nashville, bearing in mind that our only connection was the Cumberland River, 211,743 sacks of corn; 5,730

casks of bacon; 1,911 barrels of pork and lard; 8,712 barrels of whiskey, and other commodities.

JUDGE MACK: They made that all very high because they did not have to have very much of it carried.

A. In other words; at that time, the Nashville & Chattanooga Railroad was a very important carrier of western grain and other food products through to the southeast, receiving the business from its only connection, which was in the shape of boats on the Cumberland River.

MR. CALLAWAY: You have described the early history there. Explain the position of the Nashville & Northwestern.

A. After we first leased the Nashville & Northwestern Railroad, the management of the road, which up to that time had received its principal revenue from through business received from these river connections felt impelled to influence change in its direction up to Nashville in order that we might earn revenue for this newly-acquired rail line west of Nashville. The directors' reports show that we first purchased land at Johnsonville and at Hickman and constructed elevators. They show that this expedient was not successful, and that during the fiscal year, 1871-1872, no less than forty-eight per cent of the through grain handled by the Nashville & Chattanooga Railroad was billed from Nashville proper, coming, of course, from the only connections then existing at Nashville, the boats.

MR. CALLAWAY and JUDGE MACK: At Nashville?

A. At Nashville, from boats. The management of our line therefore devised what is now known as reshipping. It was the first, so far as I have been able to ascertain, the first transit arrangement of any sort in the United States. The makers had no precedents by which to go. The arangement was immediately effective, for our reports show this; that while in 1871, forty-one per cent of our grain was billed from Nashville proper, in 1872, the percentage was 28.9; in

1873, 18.7; in 1874, 9.6; in 1875 but 7.7. In other words, so far from getting the revenue from Nashville only, by this process we were enabled to haul the business from the territory originating it, and over both divisions of the line.

MR. CALLAWAY: Well, would you say that reshipping was inaugurated as a voluntary act of the carrier, or was it compelled by competition?

A. We could, as I testified before the Commission, have accomplished this purpose in either one of two ways, and so far as I can see in only two ways; first, by reshipping, or, second, by a reduction in the rates to Nashville proper. If we had reduced the rates at that time in effect via the river to Nashville proper, to whatever might have been the level of the boat rates, it would of course have accomplished the purpose, because there was not at that period the present widespread competition as between the Ohio River cities or the necessity for any rail rate adjustment; but if we had reduced the rates to Nashville we would of course have suffered whatever loss of revenue is represented by this difference on Nashville's consumption of grain coming from that territory. We would also have suffered this loss of the difference in revenue on all that grain handled during the period the river was not navigable, which was probably three or possibly four months in each year. It would have been extremely difficult, I say this advisedly, based on my own experience and knowledge, to have made a local rate on grain from the Ohio River to Nashville sufficiently low to have accomplished the purpose of meeting the combination of water rates to Nashville plus the rail rates south without extending that same low-level rate on all the traffic handled. There was not the necessity for that. The great backbone of the river service was grain; and of that grain, corn was by far the greater part. If we could, in a reasonable way, compete with the boats and could control the through traffic, there was never fear of sufficient

competition on the Cumberland River to influence or unduly depress our local rates on other traffic. That object was accomplished, we did control the through business because, with a parity of rates, if our rates are no higher than the boats, we can control the business. While some of the witnesses have testified to several weeks taken in handling grain to Nashville by rail, that does not represent the average or ordinary service. Our carriage is at least as expeditious as the boat. In addition to that we had at that time the enormous advantage of being able to handle grain in bulk. The boat lines were not equipped for handling grain other than in sacks. The first dealers in grain were located immediately on the river banks; all of them, the firm names are known to us now, were equipped to handle grain only in sacks, but when we first made it possible by a type of car to handle bulk grain, the dealers located themselves on our line and away from the river, and it was never necessary to do any more than meet that measure of freight rate to Nashville represented by the boat service.

MR. CALLAWAY: Now, after the putting in of that reshipping, without the accomplishment of and perhaps the meeting of competition of those boats, would the investment in your lines west of Nashville have been protected?

A. It would have been at least seriously jeopardized and I believe that the investment would have continued to be as much of a failure as it was with the Nashville & Northwestern Railroad, which was bankrupt when purchased by us.

Q. Is there any manner in which it can now be protected other than the methods you are now using?

A. I think it is a remarkable tribute to the brains of the men who devised this method of handling without any precedent to guide them, to say that in forty years no traffic man has ever served in that section of the country who has been able to improve it.

MR. ESTERLINE: I object. That is not the way to prove confiscation of property.

JUDGE MACK: I understand.

MR. CALLAWAY: Was the putting in of reshipping at Nashville intended to create a market at Nashville or to support a logical market, or was not Nashville already established as your concentration market?

MR. NEEDHAM: I object to the question as to what the intention was at that time, what the intention of the railroad was so far as affecting Nashville freight trade.

JUDGE MACK: You may answer.

A. I get my information first from our records, and second from a long personal association with one of the men who aiding in making the original plan, Mr. George R. Knox, who was my predecessor in office. I know absolutely—it is not a matter of opinion—that Nashville reshipping was put in by what the makers conceived to be, and what I myself now believe to have been, the impelling force of competition: that it was not, in any sense of the term, a choice: that they were compelled to do it to preserve the revenues of this newly-acquired rail property west of the city of Nashville.

Q. Was the grain business from that territory one of paramount importance?

A. The grain business was not only important but of paramount importance and continues of paramount importance. For years and years not less than twenty-five per cent of all our traffic, including coal and lumber—everything—consists of grain, hay, and the products of grain: we are a "granger" line today, as much so as the great trunk lines in the strictly western territory.

MR. CALLAWAY: Had it been a device to secure traffic could you not have conducted it with more revenue at the local stations?

A. If it was a device to secure traffic or to occasion the artificial creation of a market, we would never

have created a market where some other line could share the business, but as a local station where the business would have been altogether ours; and if a device to create a market or to bolster up a market, most assuredly it would not have received the co-operation of other lines then and now necessary to continue it.

Q. Now passing to— Had you finished?

A. No. Because our connections at Chattanooga and Atlanta have vastly greater interests at other Ohio River points than at Nashville. If they could wipe Nashville's grain business off the map it would be very much to their advantage.

Q. Passing on to the way reshipping is handled, I would have you explain the methods in use at Nashville now.

JUDGE MACK: Well, is that of any importance? The Commission has settled what the local way is.

Q. The question was asked at the argument for the temporary injunction, sir, and unfortunately none of the counsel could state exactly how it was done. That is my only purpose. Practically speaking, what method was followed? We could not answer it off-hand, and it has not been answered now precisely.

JUDGE MACK: Well, all right. I would not want to withhold any information from my colleagues.

A. It is an extremely simple thing, and may be illustrated by a movement from Cairo to Nashville. The rate is ten cents. A man brings in a carload of grain, pays ten cents per one hundred pounds, and takes his property. If, within a period of six months, he decides he will forward the car to Atlanta he comes to us. We give him a bill of lading showing Cairo to be the point of origin, and we bill the car at the balance of the rate which is fourteen cents per one hundred pounds. But we adjust the divisions of the twenty-four-cent rate, ten cents having been paid into Nashville, and fourteen cents to be collected at Atlanta, precisely as though the shipment had made

one continuous journey from Cairo to Atlanta, each part of the through line receiving precisely its proportion of the through rate.

Q. What is the effect of the establishment of through rates on the allowance of reshipping; or, rather, what is the effect on the through rates of the allowance or establishment of reshipping?

A. Well, by the reshipping practice it may be said that no rate from Nashville proper is changed, they continue unchanged; no rate available from the Ohio River or from the Mississippi River is changed. Your combinations on Nashville by means of boat service to Nashville plus the rates south continue to be available. We handle large quantities of grain on Nashville, proper, rates, either grown in the vicinity of Nashville or brought there by river. As I have said, the reshipping practice involves nothing more or less or different than the protection of the through rate from the point at which the transit begins, which with us is always the Ohio or Mississippi River, never beyond, to the point to which the grain actually moves.

JUDGE MACK: Let me ask: You said that the division, after this second shipment, of the entire twenty-four cents is made on the basis of the division of the through rate. Do the carriers from Nashville southeast receive the same amount as they would receive if the shipment originated at Nashville? Is the loss borne by the line hauling from the Ohio River point to Nashville, or is it proportioned?

A. No, your Honor. Take a car—I will name a point beyond Atlanta, because Atlanta is on our own rails—take a car going to Jacksonville, Florida. We may handle it via our line to Atlanta by the Central of Georgia to Macon, by the Georgia Southern & Florida to Tifton, and by the Atlantic Coast Line into Jacksonville. Each will receive in the settlement of the charges on that grain precisely the same revenue as though that car had originated at Cairo and moved direct to Jacksonville, without being

stopped at Nashville—I mean, on a car reshipped, the settlement between the lines would be so made.

JUDGE MACK: Yes, that I understand, but I asked as to how that division is made. The local rate from Cairo to Nashville is ten cents; the additional rate charged is fourteen cents, but if it were a shipment originating at Nashville it would be considerably more than fourteen cents to Jacksonville?

A. Seventeen cents.

JUDGE MACK: Seventeen cents? There is only three cents difference.

MR. NEEDHAM: Not Jacksonville to Atlanta. The rate is more to Jacksonvile. Seventeen cents to Atlanta, I understand.

MR. BARHAM: To Jacksonville.

JUDGE MACK: Same rate from Nashville to Jacksonville as to Atlanta?

MR. CALLAWAY: Are they, or are they not?

A. They are precisely the same.

JUDGE MACK: What I wanted to know was whether that three cents loss is borne entirely by the line from Cairo to Nashville, or whether that loss is proportioned.

A. No sir.

JUDGE MACK: In other words, do the carriers from Nashville to Jacksonville receive the proportion of seventeen cents that they would receive on a shipment originating at Nashville, or do they receive less than that?

A. They would receive, your Honor, precisely the same division as on a through shipment, and that would be devided in this way: We would first take the total rate from Cairo to the city of Jacksonville; we would divide that.

JUDGE MACK: Twenty-four cents?

A. It happens to be twenty-three cents. We would divide it on percentages which break on Chattanooga, Tennessee, and apply west and south of Chattanooga. Then we would take the proportion so determined from Chattanooga to Jacksonville and sub-

divide that on other percentages between those two points.

MR. CALLAWAY: That would apply—that is the method used when the grain moves through Cairo if it did not go from Nashville?

A. Precisely.

MR. WIMBISH: Does that same method apply to Carolina?

A. No.

JUDGE MACK: Only to southeastern territory?

A. Southeastern territory.

MR. CALLAWAY: Mr. Barham, is there variation in the matter of shrinkage at Nashville, or is that shrinkage a constant factor?

A. I do not like the word "shrinkage." If you mean that the Nashville differential varies:—yes.

MR. CALLAWAY: That is what I am getting at.

JUDGE MACK: It does vary. Use your own word?

A. That is what the railroad men say. Well, the Nashville differential varies, although to the enormous bulk of the territory and on the enormous bulk of the traffic, it is a constant factor, and is three cents per hundred pounds, Nashville as compared with the Ohio River. Now to understand why there should be variations, for example, south Atlantic coast points, four cents, that is, Charleston and Savannah; or Chattanooga, five cents.

JUDGE MACK: Chattanooga?

A. Chattanooga; on a shipment to Chattanooga proper: It is necessary to go back a little bit. Bear in mind that Nashville was originally reached in 1854 by our line and that it was the only line and therefore while the rates now are all made from the Ohio River and the rate basis takes into consideration all the Ohio River crossings, at that time the only rate basis was from the city of Nashville proper. The rates commenced there; the boats charged anything they pleased or anything that the competition between themselves might enable them to charge up to Nashville and we charged south of Nashville such

rates as the management felt to be fair rates for the service, and you added those two things together and you got your through rate of transportation. Now when we purchased the Nashville and Northwestern Railroad it became necessary to have through rates from the Ohio River, because there was the possibility of bringing the grain in up to Nashville either by a boat or by the western division of our line; undoubtedly that difference represented or reflected what the rate makers at that time supposed to be the compelled competition of the Cumberland River.

JUDGE MACK: What do you mean? That difference between the through rate, the difference between the Nashville rate and the rate from the Ohio River, that undoubtedly represented what they conceived to be the compelled competition of the Cumberland River? At that time the other rate was considerably less than the sum of the rates in and out of Nashville; was it the other rate from the Ohio River points?

A. Yes, that situation remained substantially unchanged until new lines commenced to be built; until the era of railroad development struck the south, and then for instance a line was built from Louisville to Jellico and from Jellico to Knoxville and by it the distance from Louisville to Knoxville became within three miles of the distance from Nashville to Knoxville, while the previous route had been from Louisville via Nashville, and this was shortened over 180 miles. The Chesapeake and Ohio and the Norfolk and Western were built from the Ohio River to the Virginia cities and they injected the trunk line basis into the situation. The Illinois Central and the Mobile & Ohio extended their lines south of the Ohio River. The Louisville and Nashville built the South & North road and acquired lines into Mobile and into Birmingham. The C. N. O. & T. P. built from Chattanooga to Cincinnati, and so in turn each one of the Ohio River cities was reached by a strong, aggressive fighting line, anxious to secure as much of the

business as they possibly could and prepared to fight for it. With that development grew the necessity for what you might describe as a crystalized rate adjustment by which there should be some definite relation as between all these rates. Of course as the lines were completed, as for example, from Louisville to Knoxville, the former rate from Louisville via Nashville to Knoxville was markedly reduced with the mileage, but it was not necessary always to reduce the Nashville rate, that is from Nashville proper, as much as the rate was reduced from the Ohio River. We did not find it necessary to reduce the rate, even though our competitors would have permitted us to do so, from Nashville to Knoxville as much as the rate was reduced by the new short line from Louisville to Knoxville. And so with these different rate adjustments, and with the lack of necessity for always reducing Nashville precisely the same number of cents per hundred pounds that the rates from the Ohio River had been reduced, came this variation in the equalizers. Now illustrating that just a little bit further, the present equalization to Chattanooga by the process of reshipping at Nashville is five cents per hundred pounds. That is the difference between the two rates. Why within my service with the company it was three cents, and continued so until our management believed there was the possibility of a mandatory long and short haul act by which we must readjust our local rates; we had some local rates which were fifteen cents and we advanced the rate to sixteen cents to protect it and as soon as we did this the shrinkage became five instead of three—a very simple explanation and every one can be accounted for in some such manner, starting out by a constant factor in these different rate adjustments.

MR. NEEDHAM: Did you give the date of that change?

MR. BARHAM: In Chattanooga?

MR. NEEDHAM: Yes.

A. It was either 1905 or 1908.

Mr. Callaway: Mr. Barham, state whether or not in your opinion the order of the Commission in this case can be carried out in any way except by discontinuing reshipping at Nashville.

A. No sir, I do not. I understand that we were substantially given the option of either discontinuing reshipping at Nashville or extending the practice to the other complaining points. It is totally impractical to extend it. Any discussion is a moot question because we are officially informed by the lines south of Chicago that they will not; that if brought to a choice they will discontinue their participation at Nashville; we cannot go beyond Atlanta without their help. The Louisville and Nashville cannot go beyond Montgomery or Birmingham. If they will not, we are compelled to discontinue reshipping at Nashville. The other alternative, to save something out of the wreckage, would be a flat rate adjustment; I mean a rate into Nashville which added to the rate out of Nashville would protect the present through rate; this could not be brought about; it is totally impractical; it could not be done to all the points, even though to some of the points it is possible.

Judge Mack: You have the alternative of reducing your rate to Nashville?

Mr. Callaway: Right there, I would like to ask a question along that line. As I understand the line of questioning by Dr. Needham of Major Stahlman yesterday—I made a memorandum at the time. The purport of the questions, as I understood them, was that if reshipping was abolished at Nashville, it would bring about a revival of river competition, and that the volume of the traffic by those boats would force the railroads to reduce the present rates to meet this competition. Dr. Needham asked if that would not be an advantage to the southeast. Have you ever understood before there was any talk of this case, or any purpose on the part of complainants to have these grain rates reduced, or any thought on the part of the Commission, that the rates should be reduced?

MR. NEEDHAM: I object.

JUDGE MACK: Sustained.

MR. CALLAWAY: I will put it this way: Have you ever heard in this case of there being any issue as to the reasonableness of the rates, or of any effort being made to have same reduced?

MR. NEEDHAM: I object. The record—

JUDGE MACK: That may stand.

A. I do not understand the complaint to be at all on the reasonableness of the rates; on the contrary, the rates have themselves within a very little while been specifically approved by the Commission in the Morgan grain case.

MR. NEEDHAM: May it please the court, this should be struck out.

MR. CALLAWAY: I was going to ask that, your Honor. The thought of the examiner, when examining Dr. Stone, was that a service would be rendered, namely, the reduction of these rates. There has never been an issue as to the unreasonableness of the rates.

JUDGE MACK: There is no question about that.

MR. BARHAM: Do I understand you want me to state what would happen if we abolished reshipping?

MR. CALLAWAY: Yes; I want to come to that.

A. Well, undoubtedly the first step taken would be an effort of the grain dealers to go to the river. I am not sufficiently well versed in those matters to say whether or not they could go. I do not know whether or not they have the money to invest in these new facilities. I do not personally know whether or not they could haul grain by river to Nashville for 40 cents a ton. If they have the money and could get it hauled for 40 cents a ton it would create a condition of affairs that would surely depress the rates from the Ohio River. Naturally, we would hesitate a long time, with the law in its present shape before we would reduce any rate to meet water competition, with the lack of certainty whether we could later advance it, but if it meant the serious deflection of this paramount business of ours, why it would prob-

ably be a business necessity, irrespective of what the result in the shape of loss of revenue might be. If we did meet the rate then undoubtedly every rate from Cincinnati to Vicksburg, into our territory, would be reduced, because the other lines would not consent to the existence of a rate to Nashville which would result in sending grain, grain products and hay into this southern territory via our line exclusively.

MR. CALLAWAY: Now, Mr. Barham, what would be the effect if reshipping should be extended to the Georgia towns named in the report and order of the Commission?

JUDGE MACK: Before you come to that— If you did not establish the rebilling at these Georgia points, if this order is sustained and you were "up against" the alternative of abolishing it at Nashville, before you would be confronted with that possibility or probability, would there be an increase in the river movement as a result of keeping in your local tonnent rate?

A. Yes sir.

JUDGE MACK: And it would be "up to you" to consider the effect?

A. Yes sir; but first we would await the effect.

JUDGE MACK: You would let them make their investment first?

A. Yes sir; we would not jump at a conclusion on so important a matter. We have already determined what we will do. We will sit perfectly tight in the boat and go after the business from the Ohio River direct into the southeast and let the Nashville grain trade work out its own salvation.

MR. CALLAWAY: Provided, you must ultimately withdraw at Nashville?

A. Yes.

MR. CALLAWAY: I was asking: What would be the effect of extending reshipping to the Georgia towns named in the report?

A. The report and order of the Commission in-

ferred, as I recall it, that reshipping might be given, limiting the reshipping practice to one time and always in a forward direction. I think that is the idea expressed by the opinion. In the first place, when it came to be worked out in practice it would be found absolutely and wholly impracticable to limit it to one time, although it might be possible to limit to a forward direction. You would have as many reshipments as there were occasions or towns having in them an enterprising shipper who wanted to go after the business—that would follow—but if that were not so, and if it were possible, practically, to limit the reshipping in one direction, to one occasion, in a forward direction, personally I am of the opinion that it would prove a most disastrous thing to every southern shipping town.

JUDGE MACK: What do you mean by one occasion?

A. We will take grain from Cairo to Jacksonville, Florida, that might be reshipped at some point intermediate—at some one point—but grain once reshipped might never be reshipped again.

JUDGE MACK: I understand.

A. The reasons for the opinion I have expressed are thoroughly obvious. Every point now in the south which is a shipping town or a basing point, such as Atlanta, Augusta, Macon, and others, is surrounded by a territorial zone in which that town is by far the chief factor. Our figures show that in Atlanta territory, for example, Atlanta ships three times as much grain as is shipped by other markets. Now, suppose that reshipping is extended and that you undertook to limit it to one reshipment. I will illustrate that with Social Circle, Georgia—a point 56 miles from Atlanta on the Georgia Railroad. The rate from the Ohio River to Social Circle is made or based on Atlanta—24 cents to Atlanta, and the local of 8 cents—a total of 32 cents. The Social Circle man pays 32 cents for his grain whether he gets it at Atlanta, Nashville, or the river—never anything less. Suppose such a man went to Atlanta and to

get his grain he would have reshipping at Social Circle. It is folly to say he would not have or that even smaller towns would not have it—towns reached by one line, because the line of road on which Social Circle is located for example is ably officered, and these roads would be unwilling that any reshipping practice should be extended to common points and not to local points on their own lines.

Mr. Needham: I want to object to this, because it is on the assumption that no other order would be entered by the Commission directing the establishment of these reshipping privileges at other points; we are not here to discuss that effect, but to discuss the effect of this order and take evidence upon it as to what effect upon establishing rebilling privileges at the points named in the order. To show that it would be contrary to good management to establish such privileges at other points does not have any bearing on the question at issue in this case.

Judge Mack: I will let him go on and explain it, Doctor.

Mr. Parham (continuing): Well, I think I got as far as that the rate from Atlanta to Social Circle was 8 cents—the total rate from the Ohio River is 32 cents. Now, we will say the Social Circle man wants grain and goes to Atlanta for it. When he gets that grain at Social Circle, it is billed from Atlanta, Georgia. It came from the Ohio River all right, but it is not so billed because the rate makes on the Atlanta combination, and the transit for rate purposes commences at Atlanta. There is no "come-back" in the charges up to Atlanta. We will say he wants to sell this grain at Augusta, which is a point beyond him, and in a forward direction, and the reshipment at Social Circle would be the first reshipment on that grain. The rate that he would get by reshipment at Social Circle is the rate from Atlanta to Augusta, which is 11 cents. But that grain would of necessity have attached to it a transportation value of 24 cents, necessary to bring it from the Ohio River to Atlanta.

and the final charge up to Augusta for all the transportation service would be 24 cents, plus 11 cents, or 35 cents, whereas, the rate direct from the Ohio River to Augusta is 26 cents. Therefore the Social Circle man could not go to Atlanta for grain. He would have to go to the Ohio River. If he went to the Ohio River he would have an expense bill at Social Circle from the Ohio River, being 32 cents to Social Circle, and when he got ready to send the grain to Augusta he would get back 6 cents per 100 pounds, and the grain would be carried to Augusta at a net rate of 26 cents from the Ohio River; but the Augusta man could not buy grain at Social Circle, for precisely the same reason that the Social Circle man could not buy it at Atlanta, and the Augusta man would have to go to the Ohio River. It means in its last analysis, inevitably—

JUDGE MACK: Why not the Augusta man go to Social Circle?

A. Because then his rate would start at Social Circle.

JUDGE MACK: You mean the Augusta shipper could not go to Social Circle?

A. Yes; or, if there were only one reshipment, he could not, because that grain would have consumed its one transit privilege and the Augusta man would want to reship the grain, of course. He would go to the Ohio River to get an expense bill to give him a transit.

JUDGE MACK: Every shipper?

A. Every shipper would go to the Ohio River for his grain, and then he could not sell because the man who desired to purchase would himself go to the Ohio River because he might want to reship.

MR. CALLAWAY: Would not Atlanta get some advantages that none of these towns would have?

A. That is predicated on the idea there would be any number of shipments.

MR. CALLAWAY: Take Macon, or all cities south of Atlanta named here, each one has a group of towns

around it with rates on Macon as a base point. If the grain is shipped into that southeastern territory by an Atlanta dealer, has he not absolved all of the possibilities that the Macon merchant would have of selling the merchant in the town between Atlanta and Macon, although the local point is a Macon base point? Would it not be true that the transit could be operated only in one direction, and while at Atlanta could reach out to all of these points, not the base points, south of Atlanta toward the sea?—he could not ship grain back toward Atlanta?

A. If it were the rates made on Macon, of course Macon could ship to the point.

Q. Atlanta, however, could not ship on the through rate?

A. Yes.

Q. Macon would have no transit to use back at all?

A. In that case, Mr. Callaway, there is no occasion for transit at all, but this is what would happen, something else. Assume that the grain has more than one transit value, as many as the shipper may want, but always forward.

JUDGE MACK: What is the rule now?

A. No transit at all anywhere, except Nashville, in our territory.

JUDGE MACK: How, in other territory?

A. Well, within my experience, your Honor, transits in other territories are confined to a commodity generally produced in the section giving transit, and therefore, the commodity is not moved up and down in that country. There is practically no movement of grain from Nashville to local stations on the Nashville & Chattanooga road west of the Tennessee River because all are grain-producing towns; there is no occasion for such movements. Precisely the same thing operates on cotton or other commodities which are concentrated. If you will assume, just for a moment, that grain has any number of transits, why, it would mean, of course, that Atlanta could

ship into Macon and it could ship into the entire territory surrounding Macon. It would become a competitor with Macon at every town in Macon's territory, the rates to which now base on Macon and to which Macon, of course, has now a substantial advantage. Atlanta would share that privilege with every town lying west of Atlanta; for example, Chattanooga, Knoxville, Rome, Birmingham, Montgomery, Calera etc., but no other point but Macon being unable to reship back would have any compensating advantage in any territory lying west of or in Macon's territory. Macon could ship towards the sea and so could Atlanta and every market west, and so it would go until you got to coast territory. When you get to the territory surrounding Jacksonville and Charleston, those cities would have no local territory at all. Their territory would be the common battling-ground of all the cities of the south.

MR. NEEDHAM: All of this testimony given with reference to conditions not required by the order is under objection as to its materiality.

JUDGE MACK: Yes.

MR. CALLAWAY: Those conditions you have just described would certainly apply to all of the complaining cities shown in this complaint, that are south of Atlanta, and all are, except Rome, are they not?

A. It would apply to all of the territory I have described.

Q. Rome might get some of the advantages in being nearer up on the line of transit, but if this situation you have described applies to towns and points from which there have come specific complaints, it applies to the other eight cities named.

A. So far as Rome is concerned it would eliminate us at Rome because it would necessitate a back-haul of eighteen miles to Kingston, Georgia. We could not participate in Rome business, but it would open the territory south of Rome for reshipment to At-

lanta via lines other than ours, although, as I have said, the advantage would be shared with Rome by every point of importance lying west of Rome.

Q. Would the abolishment of reshipping affect the total movement of grain into the southeast?

A. Not at all. It would not increase consumption or decrease production in the south.

Q. What effect on the revenues of the Nashville, Chattanooga & St. Louis?

A. It would be decidedly disastrous to the Nashville & Chattanooga Railroad for this reason: If you should abolish reshipping at Nashville it would force the grain business back to the Ohio River. There is no doubt of that in the world; and those rates only which we now protect by Nashville's reshipping would be charged when it was shipped from the Ohio River. But the Nashville & Chattanooga Railroad would then meet at the Ohio River the competition of every line that runs from the Ohio River, and every possible combination of those lines with others forming a through route. If the grain is brought first to Nashville and is later reshipped from Nashville, it is to a very large extent localized to the Nashville & Chattanooga Railroad. We have the only feasible and practical line for fast freight transportation from Nashville to Atlanta and to the entire section in Atlanta's territory. We have no competition so far as that is concerned, but if we had to go to Cairo, to Louisville, and to Cincinnati, and there compete for Atlanta business, we would find a half dozen strong routes and that many strong initial lines. As it is now, it is largely local business, and that is one way our revenues would be affected.

JUDGE MACK: It is advantageous to you that the southeast can buy in Nashville instead of going to the Ohio River points?

A. Precisely, because if it moves from Nashville it is practically localized to us. I can say in round

figures what it means to us. We normally reship at Nashville via the Nashville & Chattanooga Railroad, roughly, sixty million pounds of grain a month.

MR. CALLAWAY: Mr. Barham, why was reshipping extended only on grain, grain products and hay?

A. The reasons I have already given. The grain movement was the great bulk of the river business, and if we could control that in competition with the boats, we felt we had reasonable control of the entire situation.

MR. CALLAWAY: Anything further you wish to state, Mr. Barham, that I have not asked you? I have tried to shorten it, your Honor, just as much as I could.

A. No sir; nothing that I care to say.

MR. CALLAWAY: The witness is with you, gentlemen.

Cross-examination.

MR. WIMBISH: Mr. Barham, would it not be feasible for the lines of your connections in the southeast participating in retaining rebilling at Nashville by a similar concurrence, to establish rebilling at Atlanta and other Georgia points?

A. Let me see if I understand you, Mr. Wimbish. You ask if it is in the power of those lines?

Q. Acting in conjunction with you, cannot the roads against whom the order of the Commission is directed establish rebilling in these Georgia points?

A. In the absence of information as to those roads I could not answer.

Q. I will give you the names of the roads. (Hands witness the names of the roads.)

A. Oh yes. It is within the power of those lines to do anything of that sort they wish.

Q. They can save themselves of that alternative of the Commission, if they desire?

A. Yes sir; and they can also force us to abolish reshipping at Nashville.

Q. Then they can do either one. Why would it not be as feasible to generally extend rebilling in Georgia territory as it was to extend milling in transit?

A. Do you mean now, speaking from a physical standpoint, as a physical proposition, the feasibility?

Q. I am speaking about it as a rate proposition, and the physical practicability of it.

A. There is a marked difference: Milling in transit is a conversion of grain while it is in transit. It goes from the mill to the consumer. So far as the transportation lines are concerned it may go to a shipping city, but so far as the transit privilege is concerned the movement from the point of conversion is the final movement. Grain as such does not change its form. Corn might be shipped with universal reshipping, as we have milling in transit, from point to point with any practicable number of transactions each involving the readjustment of the charges and each involving a double terminal service, and very much additional expense to the carrier, and when we are through with it all, there is no addition whatever to the gross return to the carriers as against a single direct handling. There is also this difference: Milling in transit was a voluntary concession, first on the part of the Nashville & Chattanooga Railroad which originated it. It was extended as a voluntary act. Having once extended it and having put it in from point to point, we could not, in conscience, refuse it at any point, and other lines could not have gotten a reasonable part of the business if they had refused to put in the privilege at their points. We have not voluntarily established reshipping. We did it in a purely involuntary way, and we have not extended it. Now I am frank to say, Mr. Wimbish, that personally I do not believe in transits at all. I believe they are an added tax on the transportation lines in the United States, and while it may be necessary from an economic point

of view to concentrate cotton and grain, that it ought not to be done at the expense of the carrier.

MR. WIMBISH: You had rebilling in Atlanta for a short while, did you not?

A. I understand that, years before my connection— No: I do not think we ever did.

Q. You did not?

A. I do not think so. No: I understand there were some very gross manipulations of the Atlanta rates, but that was prior to my connection with the company in 1898.

Q. You are not informed then?

A. If it ever was, I do not recall ever having heard of it. They did most everything else, though, there, at one time. I mean, from a rate point of view.

MR. WIMBISH: Mr. Barham, I believe you said that it would be utterly impracticable if reshipping were abolished at Nashville to establish a flat rate from the Ohio River crossings into Nashville that would equalize the various distances in Georgia and Carolina territory. In other words, you could not accomplish by means of a flat rate into Nashville what you are now accomplishing through the rebilling at Nashville?

A. Yes sir; you understood me to say that, in my opinion, this situation could not possibly be covered by a flat rate adjustment. I personally know of few things that are more difficult than to change by a flat rate system a transit practice, and may I illustrate it?

MR. WIMBISH: I really am satisfied if you are.

MR. BARHAM: The situation cannot be solved by a flat rate.

MR. MCCONNICO: I think he had better give his reasons because our friends are so clear.

MR. WIMBISH: I shall insist that I only asked him a simple question that he could answer with "Yes" or "No."

MR. CALLAWAY: He has the right to explain.

MR. BARHAM: Do I answer?

JUDGE MACK: You have answered, have you not?

MR. WIMBISH: Mr. Barham, I want to ask you this: Should it be proved that grain can be moved from the Ohio River crossings by boat to Nashville at two cents per 100 pounds, would you meet that rate?

A. If it was actually moved at two cents per 100 pounds?

MR. WIMBISH: Yes.

MR. BARHAM: Well, of course, Mr. Wimbish, that is a very big question; it involves many thousands of dollars, and I do not know that I am authorized to answer a question of that importance, but whether we met the rate from the Ohio River to Nashville or not—I mean now for our carriage west of Nashville—the possibility of cutting the rates on Nashville combination would undoubtedly influence whether we did it or not. A reduction of the rates from all the Ohio River crossings—

MR. WIMBISH: I wanted to know if you would meet a two-cent rate.

JUDGE MACK: What do you mean by "meet rates" of two cents?

MR. WIMBISH: I asked if he would do it.

MR. BARHAM: You mean for our haul west of Nashville? I could not answer that. If failure to meet it meant the loss of a great volume of business, we would meet it precisely as grain is hauled to-day from St. Louis to Cairo for two cents.

Q. Could you haul from Cairo to Nashville at two cents, and yet have grain to bear its proper proportion of the transportation burden?

A. Certainly not.

Q. Did you have a right to reduce a rate to less than cost of service?

A. Of course not.

Q. Then you would not do it?

A. We do not do it.

JUDGE MACK: You are putting a different proposition, Colonel, in the last question.

A. It all depends on what you mean by "less than cost." I think there are some statements in a recent decision of the Commerce Court that a railroad has a right to reduce its rate to less than cost, if you mean by cost the proportion of all the charges. It cannot reduce to less than the expense of the additional haul, but those are two different statements.

MR. WIMBISH: Your Honor, no man can estimate the real cost of service. Of course, they can approximate it, and it is a favorite way of the carriers and a truthful one. We want to meet competition. They may adjust rates to less than normal to a point —to any point—that is not less than the proportion of the transportation burden.

JUDGE MACK: Oh no. They can reduce to less than the proportion. They may reduce it if the decision of this court is sound. They may reduce it if so compelled by competition to a point that is much less than the proportion that this traffic proportion ought to bear. As long as they do not reduce it to a point cheaper the result of the reduction would be that they would be worse off financially at the end of the year than if they had not done the business at all.

MR. CALLAWAY: It is the additional cost of movement.

MR. WIMBISH: I want to get at this, Mr. Barham: What can your line afford to haul this traffic for under the stress of competition of two cents?

A. Now, I know you want to be fair with me, and it would not be at all a question of competition from the Ohio River to Nashville or the cost of such service, because it would involve the possible loss of the traffic for our line south of Nashville. Therefore, it might involve the creation of an entirely new rate from the Ohio River to Atlanta or beyond, with of course a reapportionment of that rate as between the several divisions of the line. As I started to say, Mr. Wimbish, if it became necessary to base our rates on two cents to Nashville rather than lose all

this business, I should say we would be compelled to do it.

MR. NEEDHAM: I understood you to state that if the rebilling privilege is taken out at Nashville you would be driven back to the competition upon the rivers at the river crossings. Do you not meet that competition now?

A. Yes.

MR. NEEDHAM: If the rate on the river to Nashville was not substantially reduced; that is, if the new conditions pictured to us here were not, would you have any more competition if the rebilling practice was taken out than now?

A. Vastly more.

Q. Explain that. I do not quite understand. Assuming now that the river competition to Nashville was not substantially more than it is now.

A. Yes. Now, let me see if I understand: You mean if the business is driven back to the Ohio River?

MR. NEEDHAM: Yes. I want to understand you, and you want to understand me. I understood you to say that no matter what happened or did not happen at Nashville, if the reshipping privilege was taken out at Nashville you would be driven back to the Ohio and Mississippi Rivers, and would have to enter into competition there for the business. Now, I understood from that, that even if the river competition did not lower the rate to Nashville as it is to-day, you would still be driven back to the river to compete with the other lines. Is that right?

A. Yes.

Q. Now, explain how it would come about that the competition from the Ohio and Mississippi Rivers between you and the other lines of railroad now to the southeast territory would be increased by the taking out of the rebilling privilege if it was not effective by a reduction of the rates on the river to Nashville.

A. Well, in the first place, bear this in mind: The Nashville, Chattanooga & St. Louis Railroad is not an initial line at Cincinnati, or at Louisville, or at Cairo, or at Evansville, or at Henderson. We are initial lines only at Paducah and at Hickman, which are by far the least important of all the so-called Ohio River crossings. On the other hand, we are, substantially speaking, the only practicable line from Cairo to Nashville—not the only line physically—but not less than 95 or 98 per cent of the business moves over our line. We have, we consider, just as good a line from St. Louis to Nashville as has the Louisville & Nashville Railroad. Therefore, we enter actively into competition with the Louisville & Nashville on that business, while the Cairo business is as substantially localized to us as if we had the only line of railway. Therefore, we participate very largely in the movement of grain into Nashville as against the Louisville & Nashville. Now, the grain is in Nashville, having been brought there either by ourselves or by the Louisville & Nashville, with a small part brought in by the Tennessee Central—and that is infinitesimal as far as this is concerned. Now, it comes to the point where it is to be shipped from Nashville. Substantially speaking, the business must then move via our line or the Louisville & Nashville, and of all the traffic out of Nashville—eighty-seven and a half per cent so moves—more than that. We have in the first place a territorial agreement with the Louisville & Nashville, by which the territory is divided, and neither undertakes to compete with the other via what we consider would be circuitous routes, and therefore routes least profitable. We do not compete with the Louisville & Nashville from Nashville to Birmingham or Montgomery. The Louisville & Nashville does not compete with us from Nashville to Atlanta or to Augusta, or to that territory. There is a fan-shaped slice which is neutral as between the two roads. If the business gets to Nashville and is sold by a Nash-

ville dealer, we have a vastly increased chance of control, and to show you what that means, ordinarily speaking, in round figures, twenty-five per cent of all the grain used in the southeast is reshipped at Nashville. Of that twenty-five per cent the Nashville & Chattanooga carries eighty per cent. In other words, having no rails to any of the important Ohio River crossings, we yet handle over sixteen per cent of all the grain carried into the south and we could not hope to carry a fraction of this if compelled to obtain it solely at the Ohio River in competition with the lines there.

JUDGE MACK: It comes to this practically: that the enterprise of the Nashville dealer makes the business for your road, and if the Nashville dealer is exterminated in this way there would be nobody to make business for your road, because dealers on the Ohio River crossings are more important than those at Hickman or at Paducah and so the other Ohio River crossings would get the business as against you.

A. Undoubtedly; I could not hope to express it so well.

MR. NEEDHAM: Then, it is the storage of grain at Nashville and the enterprise of the Nashville dealer that has been referred to that makes this rebilling privilege so valuable to you in competing with other railroads; is that it?

A. Yes sir; of course they are the controlling things.

MR. NEEDHAM: So far as your competition, then, with the railroads is concerned, it is quite as important to you that this rebilling privilege should be kept in at Nashville as it is on account of the water competition?

A. Oh yes; I catch the purport of the questions? In other words, I am perfectly willing to emphasize the importance of the continuance of the reshipping privilege to our lines.

MR. NEEDHAM: I want you to understand the question. I think you do.

A. You mean it is fortunate for us we have the river competition?

MR. NEEDHAM: No. I mean that the rebilling privilege, providing storage at Nashville and especially the enterprise of your grain dealers at Nashville, supplemented by the rebilling privilege, enables you to compete with other lines of railroad from the Ohio and Mississippi Rivers into the southeast territory?

A. Yes sir.

MR. NEEDHAM: Do you recall when you first filed the rebilling privilege with the Interstate Commerce Commission under the Interstate Commerce Act?

A. I presume that it must have been filed at the time the act was passed, Doctor. I would like to explain that our original rate records, prior to 1893, have been destroyed, and I have no doubt that it was filed at the time the act was passed. It antedated the act of course.

Q. It antedated the act?

A. Yes sir.

JUDGE MACK: It was put in in 1873 or 1874?

A. 1871 or 1872.

MR. NEEDHAM: You mean that your rebilling privilege which you put in at Nashville antedated the act?

A. Yes.

MR. NEEDHAM: But I asked when you filed it with the Interstate Commerce Commission—if you remember.

JUDGE MACK: But he said he supposed, Doctor, at the beginning.

MR. BARHAM: I daresay it was filed when the law made it necessary, which I would assume to be 1886.

MR. NEEDHAM: Supposing it appears you did not file it until 1902?

A. Since you remind me, you are correct. The theory was this: It was assumed at first that as reshipping was a privilege it was not a thing which

the act required to be filed as a tariff because it changed no rates. Therefore, it was not, as a matter of fact, so filed.

MR. NEEDHAM: It was not filed until 1902, as a matter of fact.

A. That is no doubt correct.

Q. Prior to the filing of the rebilling privilege, the rates were substantially the same as they are now in and out of Nashville to the principal points in the southeast, were they not?

A. Substantially, I should say, yes.

Q. Modified only at some few points by reason of the competition to which you yourself have referred in your direct examination.

A. I think that, substantially, they are the same.

Q. You have never found it necessary to change the rate into Nashville from the River crossings or points since you first established it at ten cents at the beginning of the rail traffic?

A. I do not recall any change made since the establishment of that traffic.

MR. NEEDHAM: I think that is all.

MR. ESTERLINE: Mr. Barham, I understand you to say that this rebilling privilege at Nashville was not established voluntarily.

A. Yes sir.

Q. I did not quite understand that you built your railroad into the river. The river was there first, of course.

A. Yes sir.

Q. And when you built in there you found the business there to be had, did you not?

A. Yes sir.

Q. And in order to secure the business which then existed, you established the rebilling privilege, did you not, rather than to save business?

A. Well, I think, Mr. Esterline, that you are confusing two very widely-separated dates.

Q. No; take 1871, or whenever it was when you established it.

A. No; the Nashville & Chattanooga road was

built in 1854. Will you let me answer the question?

MR. ESTERLINE: I want to be understood.

A. In 1854, the Nashville & Chattanooga Railroad was built to Nashville for the specific purpose of getting this business off the Cumberland River. In 1871, the Nashville & Chattanooga Railroad bought another and distinct property already in existence, extending from Nashville to Hickman, Kentucky. Having bought this additional rail property, it was impelled by the force of competition on the waterway, which substantially paralleled that road from end to end, either to make rates flat into Nashville no higher than the rates which could be had by boats on that river, or to put in a practice which would substantially do that on through business, and it elected the latter.

Q. Then it bought into the situation.

A. It bought into the situation.

Q. And put in the rebilling privilege to protect itself, after that?

A. But it was impelled by consideration for the value of its property to do it.

Q. Did I understand you had finished your answer?

A. Yes.

MR. CALLAWAY: Until you bought the Nashville & Northwestern, you took grain at Nashville from the boat or rail line, did you not?

A. Our records show that before the purchase of the Nashville & Northwestern, the Louisville & Nashville and the boat lines also being then in existence, a report of the President to the Board of Directors says that everyone of these was treated on precisely the same terms. There was no difference at all. Afterwards; having bought the new line, we had an interest west of Nashville and undertook to protect it.

MR. CALLAWAY: Against the boats in the river. Just one more question, suggested by Mr. Wimbish:

I would like to ask now, Is there any reshipping or concentration of cotton allowed in Nashville?

A. No; formerly there was—a great many years ago—but not now.

Q. Is it not the custom where reshipping is allowed to confine it to the surplus of that commodity; for instance, is any concentration allowed in the cotton territory in the south? Is it not allowed in Virginia or Tennessee, although there are enormous quantities of cotton shipped there?

A. That is true, and the best illustration is the Illinois Central, which extends from New Orleans to Chicago, and to Omaha, through the Mississippi Valley. It penetrates the best cotton section east of the Mississippi River by far. Throughout that entire territory, it permits the concentration of cotton. As soon as it swings out of the cotton territory and into the grain section it permits the concentration of grain. It does not permit the concentration of grain in cotton territory nor of cotton in grain territory. Take the Southern Railway, extending from Greenville, Mississippi, to Alexandria, Virginia. It penetrates the cotton territory, and it permits the concentration of cotton throughout that territory, but it does not permit the concentration of cotton at Lynchburg, Virginia, although if they wanted to do it, it would be a magnificent point of concentration, of supply, for the eastern spinners, and practically localize to the Southern Railway an enormous movement of cotton. There is no compelling necessity for it.

MR. ESTERLINE: I am requested to ask for Mr. Wimbish, What are the divisions of the rates from Cairo and Louisville into Carolina territory, say, to points taking 37 cents from Cairo and 35 cents from Louisville via Nashville?

A. I will furnish that to you.

MR. ESTERLINE: Put that in the record.

(Exhibit.)

MR. WIMBISH: Mr. Barham, I want to ask, when did you establish rebilling at Nashville for the Nashville, Chattanooga & St. Louis, what year?

A. Well, it was during the fiscal year 1871-1872. I could not tell more closely.

Q. What time was the Nashville & Northwestern completed, did you say?

A. It was built by jerks; some of it was completed before the Civil War. We leased it in 1869 for a period of eighteen months. We bought it during that time, and the sale was confirmed by the Chancery Court in 1872 as to two-thirds, and we bought the remaining one-third from the State in 1875.

Q. When did the Louisville & Nashville establish rebilling at Nashville?

A. Our records would not show that.

Q. You do not know, Mr. Barham? Have you any objection to testifying concerning the acquisition of the majority of stock of the Nashville, Chattanooga & St. Louis Railway by the Louisville & Nashville and when it occurred?

A. It would be improper, Mr. Wimbish, because I have no information.

Q. Would you object to testifying concerning the option that the Nashville, Chattanooga & St. Louis had on the line from Evansville and St. Louis?

A. I know nothing except by common report.

Q. You do not know, as a fact, they had an option?

A. I am told at one time it was within our control. Whether or not that control was exercised, I do not know. It was subsequently purchased by the Louisville & Nashville.

Q. It is owned by that system to-day?

A. After they acquired a majority of the stock in the Nashville, Chattanooga & St. Louis—

MR. CALLAWAY: I can acquire the information as to when the majority of stock was acquired by the Louisville & Nashville.

MR. BARHAM: I think it was 1880.

MR. WIMBISH: What I would like to have then

would be the date when the Louisville & Nashville acquired the controlling stock in the Nashville, Chattanooga & St. Louis Railway, and the date when the Louisville & Nashville acquired the line to Evansville and St. Louis.

MR. CALLAWAY: I could not furnish that, but I can give the information as to the stock.

MR. NEEDHAM: You were speaking about concentration of cotton being wholly within the cotton-producing territory, as I understood you, and called attention to the fact that there was no concentration point in Virginia—Lynchburg. There is no sale or consumption of cotton of any account around Lynchburg, or in that territory?

A. No, Doctor; but consumption of cotton at a concentrating point would not debar concentration.

Q. As I understand you to say, the concentration at Lynchburg would be in the interest of hauling it to New England?

A. Yes.

Q. Not because there is any demand immediately in the vicinity of Lynchburg?

A. Exactly.

Q. That would not be a parallel case with the present controversy where the concentration points in Georgia are within consuming territory?

A. Well, it strikes me as a very exact parallel.

Q. It would not be the same, would it?

A. It strikes me as being exactly parallel to the reshipping of grain, if it is contended that the market at Nashville is artificially created and not created by conditions which compel it. Because, it is manifestly true that Nashville is a convenient market for southeast territory. It was the first of all the large markets; so Lynchburg, on the other hand, would be the first of all the large cotton markets for the New England States.

Q. Do you understand it is?

A. No; but it could be made so.

Q. There is no consumption there. Do you not re-

gard it as a fact that a concentration point in a consuming territory, where it can be convenient to consumers and enable jobbers and dealers in it to handle it better, is a very different proposition from establishing it in a territory where there was no consumption?

A. Well, concentration markets in consuming territory in the sense you mean, which implies a readjustment of the rates, as far as I know, are not attempted, except possibly in New England. I think it is in New England. Now, you never concentrate, if you can help it, in a town that consumes, for this reason: Take cotton; you would not care to concentrate if you could help it in a point having an enormous cotton mill, because it would always open the door for the substitution of local cotton for cotton which had been consumed and cut your rates; you understand that, of course.

MR. NEEDHAM: I understand what you say about it—yes; but you have not answered my question yet as to whether there is not a decided difference between establishing a concentration market within consuming territory, and establishing it in a territory where there is neither production nor consumption?

A. Very marked difference—yes.

Q. Very marked difference?

A. Very marked difference.

MR. NEEDHAM: That is all.

MR. CALLAWAY: May we not have an understanding with either side? You refer to conditions—statistics, from the yearbook of the Agricultural Department. On the preliminary hearing, page 33 of Smith's affidavit, I had published the number of bushels shipped from these several States, and the number of bushels from the square miles of area, and out of the county in which produced—that is obtained from the yearbooks of the Agricultural Department.

MR. NEEDHAM: So far as we are concerned, we do not object to the reference to any Government pub-

lication or any Government authority upon the argument of this case. We should like the same privilege, of course.

JUDGE MACK: That may be understood.

MR. MCCONNICO: I think it should not be so broad as that, on the argument of the case. It would be more conducive to information of the court and counsel if we could limit that to some reference in briefs that would be filed before the argument for counsel to analyze and see the bearing of the information. I think that would probably aid the court more.

MR. NEEDHAM: It would give me pleasure to have you refuse to make the stipulation.

MR. MCCONNICO: I want the Doctor to understand I am not refusing to stipulate. If that limitation is not pleasing to the Doctor, we will take him at his own proposition.

MR. NEEDHAM: I am perfectly willing it should be limited and put into the record or the briefs. It makes no difference. There should be fair notice, of course.

MR. MCCONNICO: Exactly. Each side should have the opportunity to answer in briefs.

MR. MCCONNICO: I am entirely willing—and the census reports, and such things.

JUDGE MACK: That is; Government reports.

MR. NEEDHAM: So are the Treasury reports.

JUDGE MACK: Those are Government reports.

MR. CALLAWAY: That is all, sir, for the Nashville, Chattanooga & St. Louis.

(Whereupon the hearing was adjourned until 9:30 Wednesday morning.)

Wednesday Morning Session.

C. B. COMPTON.

(The Witness, C. B. Compton, was sworn by Judge Mack.)

MR. CALLAWAY: Before the witness commences, your Honor, I would like to ask permission, may it please the Court, to let Mr. Barham make an extract from two or three of those reports from which we had intended putting short extracts into the record and permit him to file those extracts.

JUDGE MACK: What is the use of it?

MR. CALLAWAY: Simply because, your Honor, the data is arranged in such a way by those people who were building that road in the course of official duties that were not mere surmises but by men on the ground in the arrangement of actual data.

JUDGE MACK: But the facts are not disputed; if so, it might be well, but there is no dispute.

MR. CALLAWAY: They are not disputed but they do not concede the extent to which the testimony will carry.

MR. WIMBISH: That is a matter of argument, your Honor.

MR. CALLAWAY: It is a matter of data; the general conclusions make a case in a way. Whereas in these reports we left out as much as we could, now that we are permitting them to take the time of the Court to file an exhibit from several of these annual reports to the directors and stockholders it is all we would ask; I would like very much to do that. Some of the extracts referred to used in the affidavits and used in the preliminary hearing as an illustration it would show that the South Carolina people were interested.

JUDGE MACK: How does that help the case?

MR. CALLAWAY: It shows that by the president of that railroad in endeavoring to interest people to invest over a million dollars outside that he got up data on the tonnage of the river and the business they expected to do not only showing that Nashville was a great concentration market—

JUDGE MACK: You have the evidence, have you not?

MR. CALLAWAY: Oh, we have, sir, that it was very large.

JUDGE MACK: Now did not the witness state—at any rate he showed what your shipments were—some 250,000 bushels of grain alone in the year 1860?

MR. NEEDHAM: There is no dispute but that all of the traffic went up that way before the railroads were built; no one disputes that. The whole traffic in that country went that way and had to except by team.

MR. CALLAWAY: And that Nashville was a primary market and supplied that entire country?

MR. NEEDHAM: Except that which went by team.

MR. CALLAWAY: These facts show that southwestern country was supplied not from Wabash Valley but by Nashville.

JUDGE MACK: It could not be supplied by the Wabash Valley except by going down the Cumberland to Nashville.

MR. CALLAWAY: No, it was collected at Nashville, not at Louisville and other points, but Nashville was the great primary market.

JUDGE MACK: But all that is admitted; there is no dispute; they have said it in the broadest possible way; that is my understanding. You can not make it any broader by putting a whole lot of documents in.

MR. BRANDEIS: All right, sir. Mr. Compton, state your name, residence and occupation.

A. C. B. Compton; residence, Louisville, Kentucky; Freight Traffic Manager of the Louisville and Nashville Railroad.

Q. How long have you been connected in the territory south of the Ohio River and east of the Mississippi and in what capacities?

A. I took up service with the Louisville and Nashville Railroad the first of August, 1871; I have been in continuous service with that company since that date in various capacities—started as a messenger boy, worked through the ranks, various clerkships

to local freight agencies, contracting freight agencies, general agency, general freight agency, traffic manager.

Q. Please state if the nature of your duties has been such as to make you familiar with the rates and regulations governing the movement of grain from and to Nashville, Tennessee.

A. They have.

Q. I will ask you if you have prepared a series of maps showing the development of transportation rates from the west to the southeast during the period following the year 1850.

MR. WIMBISH: May it please the court, I would like—shall have to object to that because that has already been gone over and no issue relates to that.

JUDGE MACK: Is there any new point you want to bring out?

MR. BRANDEIS: Yes sir. I have a series of maps which the witness has caused to be prepared under his own supervision as of several dates, five-year periods, from 1850 to 1880, showing the railroads in that southeast territory at each one of those times that has not been shown heretofore and is valuable from our standpoint.

JUDGE MACK: Go ahead.

MR. BRANDEIS: And if you have so filed your paper, then please file them as exhibits with your testimony and state what they show. The identification will be made; you can identify them yourself.

(The witness hands exhibits to Judge Mack.)

MR. COMPTON: This series of maps I have prepared to show the history of the transportation facilities starting with 1850 down to 1880, which was the date of the completion of the C. N. O. & T. P. Railroad from Cincinnati to Chattanooga, Tennessee. They were prepared in my office in Louisville. Their preparation was based on five-year periods starting with 1850. The map of 1850 showed the extent of

all the transportation facilities, the rail transportation facilities in the United States east of the Mississippi River both north and south of the Ohio River. The map for 1850, speaking now of—

JUDGE MACK: These are self-explanatory, are they not? Do you need to supplement them by any oral testimony as to what they mean?

A. I think it is not necessary to do that.

JUDGE MACK: I do not think so. The green lines indicate the railroads; is that right?

A. No, your Honor, the green lines—

JUDGE MACK: Or are there two colors there, red and green?

A. Yes sir, red and green.

MR. BRANDEIS: The green represents the railroads called the western lines, and the red the railroads known as the eastern lines. The index on each map shows.

JUDGE MACK: Oh yes, this I see; there is explanation then of course.

MR. COMPTON: I wanted to emphasize, if it is not improper, the map of 1855 showing the completion of the road.

JUDGE MACK: That is all a matter for argument, the emphasis of this and the date of it is for counsel afterwards unless there is some fact you want to state that is not apparent on the map.

MR. BRANDEIS: Will you identify these maps, beginning with the first, marking it No. 1, and the others successively? Mr. Compton, were your present—

MR. COMPTON: Just a moment.

MR. BRANDEIS: Mr. Compton, were you present last evening, and did you hear Mr. Barham testify with reference to the reshipping practice at Nashville?

A. I was.

Q. State whether or not you confirm his statement of that matter.

A. I do.

Q. When was the reshipping practice at Nashville inaugurated, if at all, by the Louisville & Nashville Railroad Company?

A. It was inaugurated in 1877.

Q. At that time, the railroad—the Louisville & Nashville—had its line from Louisville to Nashville, did it?

A. It did.

Q. Did it have a railroad south of Nashville at that time?

A. Yes; the line south of Nashville, to Montgomery, Alabama, was operated by the Louisville & Nashville Railroad at that time. The component parts of the line from Nashville to Montgomery were the Nashville & Decatur and the S. & N. Alabama Railroad, extending from Decatur, Alabama, to Montgomery, Alabama.

Q. When did the reshipping arrangement at Nashville come under your personal supervision?

A. I was made General Freight Agent of the Louisville & Nashville Railroad the first of January, 1892, and at that time it came under my personal supervision.

Q. Have you—has it been in effect from that time up to the present date?

A. It has.

Q. State why you have continued the reshipping practice at Nashville in effect.

MR. ESTERLINE: Your Honor, that is put in, of course, subject to the general objection as to the other testimony.

JUDGE MACK: Yes.

MR. COMPTON: What is the question? The reshipping arrangement has been continued at Nashville for the purpose of meeting the competition in the Cumberland River. It has been continued because it was the most economical means of meeting that competition and in the protection of the revenues of the Louisville & Nashville Railroad.

Q. State, Mr. Compton, if there is any other

method which could have been adopted, or which could now be adopted or proposed which would as effectively meet the competition of the Cumberland River at Nashville, and at the same time protect the revenues of the railroad?

A. I do not know of any arrangement that could be inaugurated which would have the effect of the protection of the railroads better than the one at present in effect. I say that from my own experience it has furnished the means or the best means of protecting the railroad company's interest in the meeting of that competition. I do not believe there is any other means that could be devised which would do so well as that.

JUDGE MACK: Let me interrupt you with a question, Mr. Compton: When was this line built from Chattanooga to St. Louis—up to Paducah—it is not shown on any of your maps.

A. That is the series, your Honor, closing with 1880?

JUDGE MACK: Yes. I say: Was it built after 1880?

A. Yes, sir; the Paducah, Tennessee & Alabama Railroad—

MR. BRANDEIS: Under the reshipping practice at Nashville, it is true, I believe, that the grain coming from the Ohio River crossings through Nashville may be stopped there, and, within the six months' period, may be shipped—reshipped—from Nashville to the southeast divisions on the same rate as if it had been shipped through without stoppage from the Ohio River crossings to the same destination. Will you state, Mr. Compton, whether you are familiar with the rates from the Ohio River crossings into the southeast territory?

A. I am.

Q. Take, for example, two of the Ohio River crossings as illustrative—Evansville and Cairo—and state what would be the rate charged shippers at Evansville or Cairo on direct shipments through from these points to, say, a representative point in Georgia—

Social Circle; and compare that rate with the rate that would be charged if the shipment were stopped at Nashville and reshipped thence, and what rate would be charged to destination if the shipment moved from the Ohio River to Atlanta; for example, and thence on a combination to Social Circle.

JUDGE MACK: Has not all that been brought out? Is it not all in the record—24 cents from Ohio River points to Atlanta?

MR. BRANDEIS: It is in the record.

JUDGE MACK: And if it comes to Atlanta, eight cents additional from Atlanta to Social Circle—the only way I would know is what I have heard here.

MR. WIMBISH: Mr. Barham established it last night.

JUDGE MACK: If there is anything you want to supplement, all right.

MR. BRANDEIS: I am going along that line, and further. Social Circle is a point that bases on combination with Atlanta, is it not?

A. Yes.

Q. Then, please answer the previous question with reference to the rate from Evansville and Cairo—to illustrate—Atlanta, Georgia, is 24 cents—the rate from Atlanta, Georgia, to Social Circle is eight cents.

A. The shipper at Cairo and Evansville pays, to Social Circle, 32 cents; the reshipper at Nashville pays 24 cents to Atlanta, and eight cents to Social Circle; total, 32 cents, the same as the through shipper from Cairo. The shipper at Atlanta, drawing his grain from Cairo and Evansville at 24 cents, ships it from Atlanta to Social Circle at 8 cents, and there is a parity of the rate; namely, 32 cents per 100 pounds, charged the direct Ohio River shipper, charged the Nashville reshipper, and charged the Atlanta shipper.

Q. The rate then is the same whether the shipment moves through to Social Circle, from Evansville or

Cairo to Social Circle, or is stopped at Nashville, or is stopped at Atlanta, is it?

A. It is.

Q. Is Social Circle, in the answer you have given, taken as representative of all points basing on the combination with Atlanta?

A. It is.

Q. Take a point that bases on the Macon combination, as for example, Unadilla, and state with reference to it, what would be the rate of transportation, under each of the three forms described, with reference to the last—

JUDGE MACK: You are substituting Macon for Atlanta: It would be the same thing, would it not?

MR. COMPTON: It would be the same thing, your Honor, except that the rate to Macon is two cents higher than to Atlanta, and the total would be 34 cents per 100 pounds, to Unadilla, as compared with 32 cents to Social Circle.

MR. WIMBISH: If your Honor will permit me—we will not deny this: That on all points basing on the common point, the rate is the same.

JUDGE MACK: I understand: That is, you would not be asking for the abatement of this rebilling practice at Nashville if all points in the southeast territory based on Atlanta, because you would get the same thing, but they are not all based on Atlanta, and you want to have the right to share in all of them the same as Atlanta.

MR. WIMBISH: Yes sir.

MR. BRANDEIS: Mr. Compton, let us take a point which does not have its rate on a combination with the basing point. Let us take, for example, Augusta. State with reference to Augusta, what would be the rate under each of the three different forms of movement.

A. The rate from Cairo and Evansville to Augusta is 26 cents per 100 pounds; the reshipper at Nashville pays the same thing—26 cents per 100 pounds;

the Atlanta shipper would pay, Evansville and Cairo to Atlanta, 24 cents, plus 11 cents, Atlanta to Augusta, Georgia, total, 35 cents, as compared with a direct rate from the Ohio River crossings of 26 cents, and the difference between twenty-six and thirty-five is nine.

Q. Now, if you take, instead of Augusta, Cordele—that is a basing point, is it not?

A. It is.

Q. And one of the complaining cities before the Commission?

A. It is.

Q. State with reference to it, what would be the rate under the different forms of movement.

A. Do you mean, What is the rate to Cordele, Georgia?

MR. BRANDEIS: To Cordele, Georgia.

MR. COMPTON: The rate from the Ohio River crossings to Cordele, Georgia, is 29 cents per 100 pounds; the rate paid by the reshipper at Nashville to Cordele, Georgia, is 29 cents per 100 pounds.

Q. So each is to that point, then, the same whether the shipment stops at Nashville or not?

A. Yes; the through rate from the Ohio River crossings to Cordele, Georgia, is 29 cents.

Q. The same is true with reference to all the other basing points in Georgia?

A. Yes sir.

Q. With reference to Augusta, for a moment: What advantage have the Nashville shippers over Atlanta shippers with reference to shipments from the Ohio River, with Augusta destination?

A. They have an advantage of nine cents per 100 pounds.

Q. Now, if there were no reshipping privilege at Nashville, and the rate into Nashville were maintained at ten cents, what would be the result with reference to shipments to Augusta under the various forms of movement?

A. If there were no reshipping in effect at Nash-

ville, using Augusta to illustrate, rates from the Ohio River to Nashville ten cents, plus 19 cents, would be 29 cents for 100 pounds, to Augusta; that, the Nashville reshipper would pay who drew grain from the Ohio River for shipment to Augusta; the direct shipper from the Ohio River points to Augusta would pay 26 cents per 100 pounds; the Atlanta shipper would pay from the Ohio River to Atlanta 24 cents per 100 pounds, plus 11 cents, per 100 pounds, or 35 cents per 100 pounds. There is a disadvantage as against the direct shipper of 9 cents, and, under the application of the ten-cent rate to Nashville and the full rate out, there would be a disadvantage against Nashville of 6 cents per 100 pounds.

MR. WIMBISH: Would it be 3 cents?

JUDGE MACK: Six cents—the difference between 29 and 35.

MR. BRANDEIS: If, Mr. Compton—let us go back for a moment: It has been said in this record, and I do not wish to encumber it with further question on the subject, that the alternative that the railroads at Nashville have as against the reshipping practice for meeting the competition in the Cumberland River is to reduce their rates to, say, 7 cents, from the Ohio River to Nashville, so that the rate will be a flat rate in. If, Mr. Compton, the reshipping practice were abolished at Nashville and the carriers were to reduce their rate into Nashville to seven cents, what would be the rates paid on shipments to Augusta from Nashville for the entire transportion from the Ohio River to Augusta on a shipment made by a shipper at Nashville?

A. Well, if he drew his grain from the Ohio River—using Cairo and Evansville to illustrate—he would pay ten cents, Mr. Brandeis: 19 cents Nashville to Augusta, total, 29 cents.

JUDGE MACK: If he reduced to seven, the total would be reduced to 26 cents.

MR. COMPTON: And if the seven-cent rate is ap-

plied, it would be 26 cents per 100 pounds, the same as now.

MR. BRANDEIS: So that if the reduction of the rates into Nashville were substituted for the rebilling privilege there, the Nashville grain dealer would be able to ship—to receive and to ship—to Augusta at the same rate at which he now does?

A. He would to Augusta; yes sir.

Q. Is that true of all other basing points in Georgia?

A. Yes; excepting the coast.

JUDGE MACK: Did you not say Augusta was not a basing point?

MR. BRANDEIS: No sir; it is a basing point, but not a complainant in the proceeding before the Commission.

JUDGE MACK: Your answer was: "It would as to all other basing points."

MR. COMPTON: It would, your Honor, except to the coast.

JUDGE MACK: That is: except to coast basing points.

A. Yes sir.

MR. BRANDEIS: State, if you please, to what cause is this advantage, that Nashville would have, in the event of the abolishment of the reshipping practice there and the substitution of the seven-cent flat rate into Nashville—state what that advantage over Atlanta is due to.

A. It is due to the fact that Nashville is 289 miles northwest of Atlanta, situated on the Cumberland River, an arm of the great western waterways, a primary western market, and gateway, classified necessarily as an Ohio River gateway from which rates to the southeast common and basing points are made to said common and basing points on a differential to the points of destination. Nashville rates to the southeast territory are made with relation to the rates from the Ohio River, because Nashville has the geographical location.

Q. You have said, Mr. Compton, that the rate from Evansville and Cairo to Cordele is 29 cents and that the Nashville reshipper, under the reshipping, would pay 29 cents. What would a Macon shipper, having drawn his grain from the Ohio River, pay on a shipment to Cordele?

(Witness refreshes his memory from paper.)

A. The Nashville reshipper would pay to Cordele 29 cents per 100 pounds; the Macon shipper would pay, Ohio River to Macon, 26 cents per 100 pounds, Macon to Cordele, 9 cents per 100 pounds, total, 35 cents per 100 pounds, as compared with a rate charged the Nashville reshipper of 29 cents per 100 pounds; difference, 6 cents.

Q. So the present advantage which the Nashville reshipper has over the Macon shipper on grain from the Ohio River to Cordele is six cents, is it?

A. Yes sir.

Q. Suppose, then, the seven-cent flat rate into Nashville were substituted for reshipping, would the Nashville dealer's advantage, as compared with the Macon dealer on shipments to Cordele remain the same or not?

A. Remain just the same; there would be no change whatever in it. The difference would be six cents.

Q. Suppose the rate into Nashville, after reshipping were abolished, were to remain at ten cents, to what extent, if any, would the Nashville shipper in such case have an advantage over the Macon shipper to Cordele?

A. The difference would be narrowed to the extent of three cents per 100 pounds—the Nashville shipper would still have an advantage over the Macon shipper of three cents per 100 pounds.

Q. And in that case, would you say that the advantage which the Nashville shipper has and would retain was due to the same causes which you have

stated would operate with reference to Augusta shipments—I believe it was?

A. May I ask that the question be read.

(Reporter reads the question.)

MR. COMPTON: Yes sir.

Q. Mr. Compton, Griffin is another basing point in Georgia, is it not?

A. Yes sir.

Q. Does it differ in any respect from Cordele or Augusta in that respect?

A. No; what is true with respect to Augusta and with respect to Macon is true with respect to Griffin, except the difference that will occur in the calculations.

(Witness figures on pad.)

Yes.

Q. Mr. Compton, do reshipping practices prevail at the Ohio River crossings from Cincinnati down?

A. Yes sir.

JUDGE MACK: That is: specifically the same as reshipping practices—in the same way that they prevail at Nashville? Is the operation the same, or do you mean merely that the results are the same, because of the fact that rates break at the Ohio River points?

MR. COMPTON: The arrangements, your Honor, at Louisville, Cincinnati, Evansville, and Henderson, on the Louisville & Nashville Railroad, and likewise at Cairo in connection with the Cairo lines prevail for the application of the through rate as is provided at Nashville—they are substantially the same.

MR. BRANDEIS: In the event the reshipping practice were abolished at Nashville, would or would not that fact have any effect upon the reshipping practice at the Ohio River crossings?

A. No; the reshipping practices at the Ohio River crossings would be continued.

JUDGE MACK: Let me ask, From what points do you work the reshipping practices on the Ohio River points; from where? Now, I understand the reshipping operation at Nashville is due to the shipment from the Ohio River points to Nashville and then the shipment out of Nashville to southeast territory. Now, where does that come in on the Ohio River points? Where does the reshipping or the rebilling privilege originate? Do you ship goods, say, from Chicago to Cincinnati, and then reship them from Cincinnati to southeast territory and get some concession on a through rate?

A. In the case of Chicago, your Honor, no.

JUDGE MACK: Well, from what points?

A. If you will permit me, I will go into that and explain it: I first use the Missouri River as an illustration—the center of the grain producing territory has moved west. The rate from Kansas City, to illustrate, to a point in the southeast, using Atlanta, Georgia, to illustrate, is the sum of the Kansas City to Memphis rate plus the rate from Memphis to Atlanta, the rate from Memphis to Atlanta being four cents less than from Cairo and from Evansville to Atlanta. Therefore, in order that the same through rate may be obtained via the lower Ohio River crossings—Evansville and Cairo, the full rate of 24 cents being charged from the Cairo and Evansville crossings to Atlanta, the proportion north or the proportion from Kansas City, to Evansville and Cairo, respectively, must be four cents less than the rate to Memphis.

JUDGE MACK: What is the local rate—the same from Kansas City to Evansville and from Kansas City to Memphis?

A. No; there is where the necessity arises. The local rate to Cairo and Evansville, respectively, is greater than the proportional rate from Kansas City to Cairo and Evansville, respectively, on business to the southeast.

JUDGE MACK: Will you give that in figures?

A. Yes—

JUDGE MACK: For instance: Take the local rate from Kansas City to Evansville and the rate from Evansville to Atlanta—the through rate with the reshipping; then the rate from Kansas City to Memphis and the rate from Memphis to Atlanta, and the through rate via Memphis. Take it your own way—You probably cover the same thing.

A. I have not those figures with me, your Honor, and that is why I cannot give it to you now.

MR. NEEDHAM: There is no objection to his supplying the record with that—I see what your Honor wants.

JUDGE MACK: Have you any other figures that will answer the same purpose?

A. That is the reshipping at Cairo and Evansville to the southeast—This reshipping at Cairo and Evansville that I have described is by using the equalizer north of the Cairo and Evansville gateways. Now, with respect—may I proceed?

JUDGE MACK: I do not quite understand that. What do you mean by "using the equalizer north"?

A. Reshipping is an equalizing proposition.

JUDGE MACK: Yes?

MR. COMPTON: That is to say, if the compounded items make more than the direct through rate, and you apply the through rate, it is not a shrinkage, but the application of a through rate, and I call it an "equalizer."

JUDGE MACK: Is the through rate to Atlanta via Memphis the same as the through rate via Cairo to Atlanta?

A. It is.

JUDGE MACK: And, therefore, a grain man at Cairo or at Evansville will be given a payment back, or a concession, due to this reshipping privilege on goods that are subsequently shipped from Cairo to Atlanta?

A. Yes sir.

JUDGE MACK: So as to equalize—so as to make

the total to all men—the through rate from Kansas City to Atlanta?

A. Yes sir.

JUDGE MACK: In exactly the same way as is done in Nashville to equalize the Ohio River rates from the Ohio River points to the southeast territory?

A. Yes sir.

JUDGE MACK: All right.

MR. COMPTON: Now, may I proceed with the next item?

JUDGE MACK: Yes.

MR. COMPTON: Now, using Louisville and Cincinnati, to illustrate, concerning the rate from the Missouri River applied via the Louisville gateway, the practice is the same. Using another illustration—as applied to Louisville and Cincinnati, the rates generally from the grain producing territory in Illinois, except what we call Chicago and Cook County junctions and points so classified, extending down into Illinois probably as far as a line drawn east and west through Mattoon, Illinois—the rates from that section to Cairo and to Evansville are, generally, two cents less than they are to the upper crossings of Louisville and of Cincinnati and the totals from that Illinois section as applied via the Cairo and Evansville gateways are equalized through the Louisville and Cincinnati gateways.

JUDGE MACK: Well, when you say that rates make and break at the river junctions, that is not accurate as to all rates, then?

A. The general basis, your Honor, is combination of locals. I probably should not have used the word "break."

JUDGE MACK: Well, the through rate, according to your statement is less in many instances than the combination of locals, as for instance, from these Illinois points to Louisville, and from Louisville to Atlanta, the through rate would be less than the sum of the locals—two cents less, so as to equalize it with the through rate via Cairo?

A. That is true, but if you take the basis for constructing the rates from the territory beyond the Ohio or Mississippi River, to what we call southeast territory, this combination—

JUDGE MACK: That is; the combination of the rates, for instance, from these Illinois points to Cairo, plus Cairo to Atlanta, and then the other Ohio River points are equalized with Cairo by a reduction of the combination on those points so as to give them the same through rate as Cairo enjoys?

A. Yes sir; that is true.

MR. WIMBISH: Let me ask, Mr. Compton, right there, whether this reduction in the through rate in order to bring it down to a through rate on combination—whether the shrinkage or reduction is by the lines north or south of the river?

A. The shrinkage is south of the river, sir.

JUDGE MACK: The lines north of the river get their additional two cents, then?

A. Yes sir.

MR. CALLAWAY: That is not true as to Cairo?

A. Not true—

JUDGE MACK: What do you mean by "Not true as to Cairo—as against Memphis—that it is not true"?

A. Cairo as against Memphis, your Honor, is taken care of back of the Ohio River; that is to say, that to southeast territory, no less rate is charged from Cairo to Atlanta, or Evansville to Atlanta, to illustrate, than the full rate. There is no shrinkage south of the Ohio river.

JUDGE MACK: Then it is north as to Cairo and Evansville as against Memphis when the rate is reduced?

A. That is true, sir.

JUDGE MACK: But when Cincinnati or Louisville are equalized with Cairo, the reduction is on the lines south?

A. Yes sir.

Q. And not on the lines north?

A. That is true, sir.

MR. COMPTON: Do I understand, your Honor, that I may supply—

JUDGE MACK: It is not necessary at all. It is all right. I do not care anything about it. I have the point. I do not care for the prints, but an understanding of the problem. You can put it in if you want to.

MR. NEEDHAM: There is no objection to its being put in. I would like to ask one question on this point. All the lines from the west of the Ohio River and the Mississippi River have two rates; a local to the river for all freight that stops there; and a through rate to be applied to traffic that goes into the southeast territory; is that not so? Precisely the same as it is at the coast points for imports and local consumption?

A. I think I know just what you mean, Doctor, but if I may be permitted to—

MR. NEEDHAM: Answer it in your own way.

MR. COMPTON: Using Kansas City to Cairo and Evansville to illustrate, the proportional rate as applied on through business from Kansas City to the southeast by the Evansville and Cairo gateways is different from and less than the rate from Kansas City to Evansville and Cairo proper. Does that answer?

MR. NEEDHAM: Yes.

MR. CALLAWAY: Mr. Compton, via Louisville, is not two cents absorbed north and two cents south of the river?

A. No, the difference occurs in this way on Missouri River business—

MR. CALLAWAY: Is not the rate from St. Louis to Louisville six cents?

A. Yes; I did not give that illustration or intend to give that illustration in answering Judge Mack, but I answered him as to what was done at the lower crossings in reshipping as against Memphis and what was done at the upper crossings as against Cairo and Evansville from points in Illinois. Mr.

Callaway's illustration is the equalization by the Louisville gateway of the rate from Kansas City by the Memphis gateway.

MR. WIMBISH: Is that all absorbed east of St. Louis by the southeast lines, for instance the Southern Railway? Do any of the western traffic lines absorb any part of it?

MR. CALLAWAY: It is the same at Cincinnati.

MR. WIMBISH: I want to know what lines absorb it.

MR. COMPTON: The portion accepted south of Louisville, using Atlanta to illustrate, is two cents less than the Louisville proper rate on Missouri River business; the difference—the equalizer in that case is necessarily four; two cents is taken care of by the application, two cents less than the Louisville proper rate and two cents north of the river.

MR. WIMBISH: I want to know whether the latter is absorbed by lines or not absorbed west of St. Louis.

A. The Southern Railway transports business from East St. Louis via Louisville by its own lines and engages in reshipping at Louisville under the plan I have just described.

JUDGE MACK: Then the Southern Railway north or west or Louisville would pay part of this two cents, would stand part of this two cents that the lines north and west of Louisville stand?

A. Yes.

MR. WIMBISH: Does it absorb it all is my question.

JUDGE MACK: The lines from East St. Louis to Kansas City absorb part of it.

MR. COMPTON: Your Honor, the line from Kansas City to East St. Louis gets the same proportion of the rate between those two points on through business to Atlanta as they do on Cairo, Evansville and Louisville business.

MR. WIMBISH: That is the point I wanted?

MR. BRANDEIS: There are however other lines be-

tween St. Louis and Louisville to carry grain to the southeast, are there not?

A. Oh yes.

Q. And they do absorb between Louisville to St. Louis, do they not?

A. I understand they do.

Q. And they have no lines south of Louisville?

A. No, nor south of Cincinnati.

Q. What you have said also applies to Cincinnati?

A. It does.

Q. If the reshipping at Nashville were abolished, the grain dealers at Louisville and Cincinnati and other Ohio River crossings could continue to reship in the manner you have described, could they not?

A. Yes sir.

Q. And their rates apply on any quantity, just as they do at Nashville?

A. Yes, except that I think it is proper to explain here if it is the impression that the rate on hay is an any-quantity proposition as on all other items of these it is, is not so.

JUDGE MACK: How is that?

A. The rate on hay is not the same on less than carload as on carload.

MR. BRANDEIS: Mr. Compton, have you the tariff circulars relating to reshipping at Nashville and the Ohio River crossings?

A. I have.

Q. Will you file them with your testimony and identify them in this case?

A. Nashville reshipping circular provides for rules and regulations covering the transit privileges: I. C. C.-A. 12,030, effective July 1, 1911; Cincinnati, Covington and Altoona, that is known as the Cincinnati group, I. C. C.-A. 11,658, effective February 1, 1911; I. C. C.-A. 11,642, applying at Owensboro, Kentucky, effective February 1, 1911; I. C. C.-A. 12,109, applying at Henderson, Kentucky, and Evansville, Indiana, effective October 30, 1911; I.

C. C.-A. 11,657, applying at Louisville, effective February 1, 1911; I. C. C.-A. 11,659, effective February 1, 1911, applying at New Albany. That is all.

MR. BRANDEIS: I know that these circulars were effective sometime in the year 1911 for the most part. They are the renewals of those that were in effect at the time the proceedings before the Commission in this case were had?

MR. COMPTON: These are simply brought down to date; the reshipping in principle has not been changed at all.

MR. BRANDEIS: Were or were not the Ohio River crossing reshipping arrangements in effect at the time of the proceedings before the Commission in this case?

A. Yes sir.

Q. And have been continuously since then?

A. Yes sir.

Q. Long before?

A. Yes sir, many years.

Q. The rules and regulations contained in the circulars which you have filed affecting reshipping at these crossings and at Nashville were in their details made up to conform with the suggestions of the Interstate Commerce Commission contained in the report found in the tenth volume of the Interstate Commerce Commission reports No. 1247, were they not?

A. Yes sir; the rules prescribed by the Interstate Commerce Commission in its 1247 circular caused a rearrangement of the policing regulations of those circulars? However, it is customary in the issuance of tariff circulars and where rates are affected to keep our information up to date and that is simply what we have done in this case.

MR. WYMBISH: Mr. Compton, at the time of the hearing of this complaint and the first report of the Commission rebilling at Nashville was permitted on billing from Memphis and Cincinnati; have those billings been cut out since?

A. They have.

Q. Well, why did you cut out Memphis?

A. The reshipping at Nashville was cut out; Mr. Wimbish; as to Memphis I do not think it ever applied by the Louisville and Nashville Railroad, but applied by the Nashville, Chattanooga and St. Louis; it was cut out; there seemed to be some dissatisfaction about it and it was cut out. Now the exact reasons I do not know.

Q. Well, why was it cut out from Cincinnati?

A. It was cut out from Cincinnati, Mr. Wimbish, for this reason. The Louisville and Nashville Railroad constructed its own line from Cincinnati to Atlanta, known as the Louisville and Nashville Cincinnati-Atlanta Line. After that line was completed to Atlanta we discontinued reshipping at Nashville via the Cincinnati route.

Q. You still have reshipping south of Nashville?

A. Yes.

Q. Mr. Compton, with reference to Memphis, is not the short line into the southeast by way of Birmingham and Atlanta or Columbus at any rate by Nashville, Mr. Compton?

A. The distance from Memphis via Birmingham to Atlanta is 408 miles, by way of Chattanooga, Memphis and Charleston Railroad now. The Southern Railroad and the Western and Atlantic, 448, forty miles difference. The distance from Memphis via Nashville and Chattanooga to Atlanta is a little longer than the Memphis and Charleston route distance.

Mr. Wimbish: I do not care for figures, Mr. Compton; I only want to get at the facts. It is also true that the distance from Cincinnati to Atlanta and the southeast is very much less by the Cincinnati Southern to Chattanooga and by it to Atlanta than via Nashville from Cincinnati?

A. Yes.

Q. That distance is 374 miles, that short line distance?

A. 474.

MR. WIMBISH: I mean 474.

A. Yes sir.

Q. What is your mileage via Knoxville via the Louisville and Nashville?

A. It is slightly longer, a few miles.

Q. 489?

A. That is my recollection—slightly longer. We can say that is true.

Q. What is the distance via Nashville?

MR. COMPTON: From where?

MR. WIMBISH: Cincinnati to Atlanta?

A. 110 miles greater via Louisville and via Nashville—is greater than via Chattanooga by 110 miles, which is the Cincinnati to Louisville distance. It so happens that in the construction of the Cincinnati Southern Railway to Chattanooga it made the same distance as the existing distance from Louisville to Chattanooga.

MR. WIMBISH: Then, Mr. Compton, the reshipping privilege allowed formerly at Nashville on Memphis and Cincinnati billing enabled the longer line to participate in the haul at less than what would be the combination, just as from Kansas City the longer line by the Ohio River absorbed the difference so as to equalize with the direct through rate through Memphis; is not that true?

A. The Louisville and Nashville Railroad, Mr. Wimbish, could not participate in Cincinnati to Atlanta business except by the Nashville gateways. It had to take the long haul as against the short haul or get no business.

Q. Exactly as the Ohio River cities are situated with respect to Kansas City?

A. Yes, you stay in or go out.

Q. Now, Mr. Compton, with respect to the Ohio River cities, where you now do recognize rebilling is in the short haul through Nashville to the southeast, with the possible exception of Louisville?

MR. COMPTON: For what line?

MR. WIMBISH: For what line?

MR. COMPTON: Yes.

MR. WIMBISH: Why, I say, is not the rate from the Ohio River to Atlanta and through Atlanta to the southeast via Nashville by the different lines whatever it may be?

A. Via Nashville, yes; that is, the Louisville and Nashville Railroad from Evansville to the southeast is the short line of the Louisville and Nashville Railroad to the southeast, using it as the short line through Nashville to Atlanta Territory, and it is the short line of the Louisville and Nashville Railroad through Nashville to Montgomery territory, but it is not the short line from Cairo to Montgomery.

MR. WIMBISH: I am not speaking of that territory but of Atlanta and the southeast territory.

MR. COMPTON: You did not describe it. It is true of Atlanta. There may be some exceptions.

MR. WIMBISH: Then, Mr. Compton, you do not maintain rebilling at Nashville for the purpose of equalizing Nashville in the longer haul with those lines having the more direct haul as is done at the Ohio River?

A. Mr. Wimbish, we reship at Nashville because we have to.

Q. Now, I am not after that yet. You can explain that at the proper time.

MR. BRANDEIS: Let him answer.

JUDGE MACK: He may answer in his own way.

MR. COMPTON: We reship at Nashville, not because we want to; we reship at Nashville because we are forced to reship at Nashville. Now, the line may be long or it may be short—the fact nevertheless remains that the cause of reshipping at Nashville is the force of the Cumberland River competition.

MR. WIMBISH: Yes. Now, Mr. Compton, I wanted you to bring out that fact, that you do not practice rebilling at Nashville for the same reason and to accomplish the same purpose that it is practiced at the Ohio River crossings.

A. I say this unhesitatingly, Mr. Wimbish.

MR. WIMBISH: That is a question of inference. I will not ask it. Now, Mr. Compton, when was that line to Decatur south of Nashville, acquired?

A. In 1872.

Q. Well, you then had a line from the Ohio River through Nashville to Decatur?

A. Yes.

Q. You established rebilling, I believe you said, in 1877?

A. Yes sir.

Q. If the force of competition on the Cumberland River was so great—great enough to force the Nashville & Chattanooga to establish rebilling in 1872, how was it, it was not strong enough to force you to establish rebilling as late as 1877?

A. Mr. Wimbish, if I did not say so, I should have said so—that our records show that it began at that time. I do not know personally—I have no means of ascertaining, but if I may be permitted to state my belief, I feel sure that it was done before that time, certainly by our own line to the territory that could be served by our lines via the Montgomery gateway. The South & North Alabama Railroad was completed in 1873, extending to Montgomery. It was in competition for business to southern Georgia territory in connection with the old Montgomery and Eufaula Railroad, which is now part of the Central. It is my recollection and it is true that there were diverging lines from Montgomery to south Georgia points at that time.

Q. Well, is it not true that for several years after you established rebilling and until the Louisville & Nashville acquired the controlling stock of the Nashville & Chattanooga, the Nashville & Chattanooga did not recognize your expense bills; in other words, there was no interchange between you at Nashville?

A. I cannot say, Mr. Wimbish—I do not know. The Louisville & Nashville Railroad and the Chattanooga Railroad were of course doing all they could

to get all the business they could in the usual selfish way that people do, and naturally the Louisville & Nashville Railroad would prefer its own line. As to whether or not there were any controversies between the two as to the recognition of each other's expense bills or reshipping at Nashville, I cannot say.

Q. Has not the effect of rebilling as practiced at Nashville been simply to provide a point for stoppage in transit and for the accumulation of large quantities of these products at a point here necessarily it must be hauled out at some time, either by the Louisville & Nashville or by the Nashville, Chattanooga & St. Louis, in which it is largely interested?

A. No.

Q. How else does it come?

A. I must return to the fact, or emphasize the fact, rather, that the rebilling at Nashville is practiced because of force, and not because of preference—not because there is any desire on the part of the company that I represent, and I am sure that that is so as to the other—to give to Nashville nothing with respect to rebilling, that is not forced by competition. The rebilling at Nashville was the result of the natural force of competition. Without that, Mr. Wimbish, I do not believe the rebilling at Nashville would be justified.

Q. Well, do you think the same forces operating at some other point would justify and require rebilling at that point?

A. Well, that is rather a broad question, and what I might say would be a pure guess. I would not establish rebilling at any point until I had to—if at all—until after I had given the matter the most careful consideration—and what that would be, I cannot tell in advance.

Q. You do not quite catch my question, Mr. Compton. It was this: If the same forces are in existence, you would of course be required to take the same action; otherwise, it could not be a compelling force.

A. Oh, if you are compelled, you are compelled.

Q. Then, do not those conditions exist at Decatur, Alabama?

A. No.

Q. Where is Decatur?

A. On the Tennessee River.

Q. What rail lines serve it?

A. The rail lines serving it are the Southern Railway and the Louisville & Nashville.

Q. Why is not Decatur, then, similarly situated as to Nashville?

A. Well, Mr. Wimbish, Decatur, Alabama, is on the Tennessee River, in fact; but it is above Mussel Shoals, and the river is not navigable but a very short time at extremely high water. The competition at Decatur has not shown itself sufficient to justify any arrangement at Decatur in the way of reshipping.

Q. Well, are you advised that the Government reports show very much larger tonnage of grain moving on the Tennessee River than on the Cumberland?

A. No; but I want to say this as to Decatur: I know Decatur and its environments over a long period of years and I know that there has not been enough influence exerted on the Tennessee River at Decatur to justify the Louisville & Nashville Railroad in establishing rebilling at that point.

Q. Where is Florence, Alabama, located?

A. Florence, Alabama, is located on the north bank of the Tennessee River just below the Mussel Shoals.

Q. What rail lines serve Florence?

A. Florence, Alabama, is served by the Southern Railway from the south; and, on the north, by the Louisville & Nashville Railroad, on the Sheffield Division. While Florence is below the Shoals, still Florence has its difficulties with respect to boat transportation, because it is on a narrow, treacherous body of water pouring from below the Mussel Shoals, making it somewhat hazardous to get into that city.

Q. I invite your attention to the report, Mr. Comp-

ton, showing that for the year 1909, there were shipped between Paducah and Florence on the Tennessee River 1,460,400 bushels of grain, which was nearly fifty per cent more than was shipped to Nashville during the same year on the Cumberland River.

JUDGE MACK: What were those figures?

MR. WIMBISH: 1,460,400 bushels, or 30,885 short tons as against the figures which I quoted yesterday from the Cumberland River showing about 650,000 bushels for the same period.

MR. COMPTON: May I look at that?

MR. WIMBISH: Yes sir, you may.

(Hands witness the book.)

MR. COMPTON: There has been a movement of grain in the Tennessee River, and it is quite a rich territory, but however large or however small it has not had an influence sufficient to justify the establishment of reshipping arrangements by the Louisville & Nashville Railroad at Florence or at Decatur.

Q. Where is Riverton, Alabama?

A. Riverton, Alabama, is on the south side of the river, probably twelve miles below Florence. I may be mistaken as to distance, but it is on the south side of the Tennessee River, below Mussel Shoals. The line of the Southern Railway reaches that point exclusively; the Louisville & Nashville Railroad does not.

Q. I invite your attention to the fact that the Government report states that the river is navigable the entire year from the mouth to Riverton, Alabama—on page 667.

A. That is true, and I know that of my own knowledge, and that there are large steamers plying there between Riverton and St. Louis.

Q. Is there not a line of steamboats and has there not been for several years a line of steamboats from Chattanooga to points on the Ohio River?

A. No; it is fair to say this, Mr. Wimbish, in an-

swer to your question: That there have been over a long period of years ventures on the part of Chattanooga people and others to establish boat lines between Ohio River points and Chattanooga, but nobody has ever been able to successfully operate with a profit a line of boats between Chattanooga and the Ohio River. About two years ago—maybe three—there was a gentleman in Chattanooga by the name of Patton—he was a patent medicine man with considerable means—who conceived the idea that he would establish a boat line between Chattanooga and the Ohio River, connecting with rail lines on the north bank, and getting what business might be obtainable from Cairo, Evansville, and so forth, but the service has been indefinite and unprofitable, and the boats are not of sufficient size to cut any figure whatever.

Q. Are you informed, and is it not true, that very recently the Government improvements at Mussel Shoals have been such that now very large boats run up to Chattanooga?

A. No sir.

Q. Recently, a boat with 1500 bales of cotton in it—

A. Excuse me, I desire to answer that question.

Q. I thought you said "No."

A. No; I did not answer it. The Government has not finished the work on Mussel Shoals—has been at it now for several years—a great many years—and I have known of it for over thirty years—yes, forty. It is a question as to whether or not—it certainly is in my mind—a question as to whether or not it will ever be worth anything. You asked me if I did not know that a boat carrying 1500 bales of cotton moved from Mussel Shoals to Chattanooga. Mr. Wimbish, that is an impossibility—cotton from the Tennessee River to go through—to come to Chattanooga from below Mussel Shoals, must go through the canal, and that is a very small boat. Fifteen hundred bales of cotton, if made into tons, or reduced to tons, would

be 375 tons, and that would be nothing else but cotton, and that would be a very small boat. Now, I have dealt with the Tennessee River for more than thirty years, and the cotton from the Tennessee River, Mr. Wimbish, moves down stream, and is moved no other way. The market conditions are such that Chattanooga could not get cotton from the lower Tennessee River. Naturally, the market is at the Ohio River points, where the transportation is cheapest, and there is a very considerable consumption of cotton at Ohio River points, and there has been, to my knowledge—and I have handled the question of cotton on the Tennessee River to the territory served by the Tennessee and Ohio Rivers—I have known of that personally for a great many years.

Q. Now, Mr. Compton, do you agree with Mr. Barham that a flat rate from Ohio River crossings into Nashville could not be effective to preserve the present adjustment of rates in southeast and Carolina territory if rebilling should be abolished at Nashville. Do you agree with Mr. Barham that that is true?

A. I would like, Mr. Wimbish, if you can consistently, ask me specifically just what you mean—not what Mr. Barham said, but just what I think about it.

Q. Suppose you had a seven-cent flat rate from the Ohio River cities, Nashville, Louisville, Evansville and Cairo, to Chattanooga. The through rate is now 23 cents. The local from Nashville to Chattanooga is 16 cents, which, added, makes 23 cents.

MR. COMPTON: What do you mean?

MR. WIMBISH: Flat rate in and local out—flat rate seven, and local from Nashville to Chattanooga—the Nashville combination—makes 23 cents or two cents more than through rate.

MR. COMPTON: That is true.

Q. So the effect of a seven-cent flat rate would be to advance the Chattanooga rate?

A. That is correct.

Q. You take Knoxville and apply your seven-cent local from Evansville and Cairo, and the difference in that rate would be three cents.

A. That is correct, sir.

Q. You take Carolina points, where the rate now is 35 cents from the river—well, from Louisville, 35 cents, and from Evansville and Cairo 37 cents—Take those points, from Carolina, and the rate from Nashville is 33 cents; add your local, and you have a combination of 40 cents on Nashville which is an advance of five cents in the Louisville rate and of three cents in the Evansville and Cairo rate. You take Jacksonville—Your rate from Jacksonville is 23 cents, and also from Evansville and Cairo; from Nashville it is 17 cents; add your flat rate of seven cents, and you have 24 cents, or an increase of one cent to Georgia common points. There would be no change, and to Atlanta points there would be probably a reduction as to all points where you practice rebilling—

A. I do not agree with the latter.

MR. WIMBISH: That is unimportant. I am not dealing with that.

MR. COMPTON: I do not agree with any part of it without an explanation.

JUDGE MACK: Give your explanation.

MR. BRANDEIS: I did not hear any question asked in connection with it all.

MR. COMPTON: I understood you to ask this question: Would the compound or the sum of the locals produce the figures that you have just read? Of course, I can answer but one way and say "Yes."

MR. WIMBISH: My question was this, Mr. Compton—and the only thing I think is important right here, and that is: Could you, under a seven-cent flat rate to Nashville, maintain the present adjustment of rates in the southeast and Carolina territories without changing rates out of Nashville; in other

words, would the seven-cent flat rate into Nashville accomplish the same purpose?

MR. CALLAWAY: I understand Mr. Barham has testified to this?

MR. COMPTON: Mr. Wimbish, it is apparent on the face of it that if a flat rate in and a flat rate out of the points described by you was applied, the route via Nashville would be excluded from the business.

MR. WIMBISH: Yes sir. Well, you could readjust the rates so as to meet that situation under a flat rate into Nashville?

MR. COMPTON: As I said before, I do not know. I do not believe it is possible to do it. The reshipping at Nashville under forced conditions compelled the application of the through rate. Now, I want to say this, if you please: In the beginning, the rate from Nashville was generally and nearly always seven cents per 100 pounds less than the rate from the Ohio River.

JUDGE MACK: That is, to the Carolinas?

A. That was true to the Carolinas also, your Honor, since the establishment of the reshipping—new routes, new railroads forming new routes—changed circumstances and conditions with respect to transportation in the south have caused a change, and that accounts for the variation in the equalizer, or the amount of the equalizer at Nashville. The fact that—using the Carolinas to illustrate—conditions have been changed in their relation to the Ohio River and to Nashville via the Ohio River, because of the construction of a short line, and a rate-making line, is not due to reshipping at Nashville, and has nothing to do with it. We undertake at all times, or have in the past, to so adjust our rates that they will contain a measure of reasonableness attested by the conditions showing themselves in the southeastern territory. Those difficulties necessarily appear. We cannot always make rates as we desire. No line can do that. So, I say this, Mr. Wimbish, that a

flat rate to Nashville of seven cents plus the to-day's rate out from Nashville would exclude the Nashville route from the business to the destinations where the equalizer is more than three cents.

MR. WIMBISH: Mr. Compton, do you recall testifying before the Commission to the effect that in your opinion, referring to grain grown in the north and northwest, the cost of unloading, bringing the grain to the river bank by rail, loading in the boats, carrying by the Cumberland River to Nashville, and transferring at Nashville to elevator or to the cars, would doubtless exceed the through rail rate?

MR. COMPTON: Would doubtless exceed what?

MR. WIMBISH: The through rail rate.

A. I do not, Mr. Wimbish.

Q. Is that still your opinion, if you so testified?

A. I do not think I testified to that, sir. I testified to this: That the arrangement for reconsigning at Nashville was attractive to the Nashville reshipper because it was a dependable quantity. I did not testify—I could not have testified that the boat transportation at Nashville was greater than the regular transportation.

Q. I suppose there would be no objection on the part of anybody for me to call Mr. Compton's attention to it, and incorporate what that testimony was.

MR. BRANDEIS: It is probably in the record already. I should like to have his attention called to it now.

MR. WIMBISH: I cannot take the time now to find it, but I will find it and show it to you. Would you meet a three or three-and-a-half-cent flat rate to Nashville from Ohio River crossings made by water.

A. Mr. Wimbish, I am not prepared to say—I do not know. I would approach that question very carefully, after the rate was established. We have got now something new: that is, the question of having met the competition of the water lines. I hope, therefore, that I may be excused from making any suggestions as to what I might do, except I am

willing to say I would approach the matter very cautiously—but I do not know.

Q. Even if you decided you could and would meet that rate from Cairo and Evansville, possibly could you afford to meet it from Louisville into Nashville even though that might meet the exact competition at Cairo?

A. The first railroad constructed from the Ohio River to Nashville was the parent or the main stem of the Louisville & Nashville Railroad. Later, lines were constructed from Nashville or to Nashville, or between Nashville and the Ohio River crossings—Evansville, Cairo, and so forth. The basis for constructing rates from the Ohio River crossings to Nashville is the same. I do not believe that the Louisville & Nashville Railroad would establish a rate from Evansville or Cairo less than from Louisville. I do not believe the Louisville & Nashville Railroad can establish—justly establish and maintain a lower rate from Louisville than from the other points, or vice versa. They have been linked together for so long that I believe they are inseparable and it is possible that the competition is not quite so severe between Louisville and Nashville to-day as between Paducah and Nashville. Nevertheless, whatever might be adopted from the lower crossings, necessarily must be adopted from the other points.

Q. Mr. Compton, when did the Louisville & Nashville file with the Interstate Commerce Commission its circulars establishing rebilling at Nashville? Was it not in the year 1902?

A. I cannot say, Mr. Wimbish. These are the facts: We did not understand under the old law that it was necessary or proper to file such information with the Interstate Commerce Commission and we did not commence filing it until probably 1902 or 1903.

Q. Were you approached in 1903 by the Southeastern Millers' Association, or representatives of that

association, urging you to abolish reshipping of flour at Nashville, and if so, upon what grounds did they ask you to do that?

A. My memory is not very clear on that. I do remember, however, that the question came up as to whether or not the rebilling at Nashville might be abolished. It was not done. I did not think it ought to be done. I do not see how it can be.

Q. Did you not issue a circular withdrawing the privilege at Nashville from flour based upon that presentation of the Southeastern Millers' Association? Did you not do it on their representation that it was a discrimination against them throughout the territory?

A. I never made any change in rates because of a recommendation of discrimination. We change our rates because—now, wait a minute. Read that question.

(Reporter reads the question.)

MR. COMPTON (continuing): I desire to say that we always are glad to take up any matter that is presented to us, but I cannot say that any circular was issued because of representation of discrimination, although it would not be proper for me to say that if a man should bring up to us a question of discrimination, we would not consider it. I did not mean that.

Q. Then why did you issue the circular, Mr. Compton?

A. I do not know that I did.

Q. Do you know that you did not?

A. No; I will not say that we did not, Mr. Wimbish.

MR. WIMBISH: I expect to put a witness on the stand to testify as to this.

MR. COMPTON: Well, I am not willing to testify in the affirmative.

MR. WIMBISH: I have a witness here who will testify to this.

MR. COMPTON: Of course, Mr. Wimbish, I testify from my own information.

MR. WIMBISH: I thought that might refresh your memory, Mr. Compton.

MR. COMPTON: No sir; it does not refresh my memory at all. I will say this, that I fully recognize I am under oath and am testifying to the truth as I know it.

MR. WIMBISH: No one questioned that about you, Mr. Compton. Do you know whether rebilling existed at any time at Atlanta?

A. No.

JUDGE MACK: You mean you do not know; or, it did not?

A. I do not know that it did not.

Q. Then you are not familiar with the reasons for its being taken out?

MR. WIMBISH: I am through.

MR. NEEDHAM: The first system of railroads into the southeast territory made connection with the system of waterways at Chattanooga; that was for the purpose of reaching the Mississippi River, and its tributaries, I suppose—a system of waterways, was it not?

MR. COMPTON: Are you speaking from the 1850 map, Doctor?

MR. NEEDHAM: Yes; exhibit one.

MR. COMPTON: It shows the construction of lines from Charleston to Chattanooga, the construction to the west of the railroads was for the purpose of reaching the waterways of the west.

MR. NEEDHAM: And they took the first point—Chattanooga—nearest to the southeast territory—This may be apparent, but I am laying the ground for some other questions.

A. Yes; the line, Doctor, was constructed from Atlanta to Chattanooga by the State of Georgia under the charter name of the Western & Atlantic Railroad.

Q. That has been stated. I simply wanted to call your attention—In what year was it that the road

was opened for business from Chattanooga to Nashville?

A. In 1854.

Q. The purpose of that road at that time was to reach a nearer point to the Mississippi and Ohio Rivers; was it not?

A. No sir; it was for the purpose of reaching a reliable navigable stream on which could be depended the movement of traffic, or on which there was a very considerable traffic. The town of Chattanooga was really no town at all. It happened to be the point at which they thought they could cross the Tennessee River. Chattanooga is situated in a mountain gorge, through which the Tennessee River runs, and it is not now and never has been a dependable stream on which a great volume of business might be transported, Doctor.

Q. The Government reports will show from year to year the transportation by water over the Tennessee and the Cumberland Rivers. Do you wish to say anything further regarding that transportation or to differ in any way from the Government reports?

A. Why, I would like to make a remark about it.

MR. NEEDHAM: Certainly; go ahead.

MR. COMPTON: The Government report speaks of the Tennessee River as a whole; it does not cut it up, and show where this business is located. The Tennessee River between Chattanooga and Knoxville is a gorgy, narrow stream. Between Chattanooga and Stevenson—I will say below Chattanooga—a great part of the way, it is through the mountains—a very treacherous stream. In fact, there is a place in there called "The Sucks" between Chattanooga, Tennessee, and Stevenson, Alabama. That makes it a very dangerous stream to navigate, and the boats must be tied to the banks in order to go through those places, to aid them. The volume of grain transported—or raised—upon the Tennessee River is below Mussel Shoals. Now, that would be true in the Government

report respecting the Ohio River, Doctor. The Government report will show a very considerable amount of grain raised on the Ohio River, but when you take the upper Ohio River, it is less, and when you get to the lower, it is more. While it is true the Government reports are correct, yet the report does not show the location of the grain on these streams.

Q. That is, the point of origin of the grain?

A. The location, or where raised.

MR. NEEDHAM: That is what I mean—the point of origin or production. In this connection, may it please the court, I will introduce some extracts from the reports, not to contradict this witness, but for the purpose of showing what the Government report shows regarding the transportation on these two rivers. Now, was not the rebilling privilege put in at Chattanooga—has there ever been a rebilling privilege at Chattanooga?

A. None, to my knowledge.

Q. You have stated also that there was never any put in at Decatur?

A. That is true, sir; there never has been.

Q. The line also crosses at Johnsonville?

A. Johnsonville is on the Nashville & Chattanooga Railroad, Western Division, Doctor.

Q. Is there any rebilling privilege there?

A. No sir.

Q. Is there a rebilling privilege at any point on the Tennessee River, for any purpose whatever?

A. Not to my knowledge.

Q. Mr. Barham testified last evening that if the rebilling privilege was taken out at Nashville it would drive the competition back as between the railroads to the Ohio and Mississippi River crossings. Do you agree with that?

A. If the rate were reduced?

MR. NEEDHAM: If the rebilling privilege were taken out at Nashville, would it drive the competition as between the railroads leading into the southeast territory back to the river crossings?

JUDGE MACK: What is your hypothesis as to the rate, Doctor?

MR. NEEDHAM: I have not stated that, but, simply, if the rebilling practice was taken out.

MR. COMPTON: If the rebilling practice at Nashville were abolished, the route would be closed to the extent that reshipping at Nashville prevails; it would move back; that which is at Nashville would move back to the Ohio River and be shipped from thence to the various points of destination in the southeast as it is to-day on the same roads.

MR. NEEDHAM: That is, it would move through Nashville on a through rate without stopping at Nashville, or it would go to Nashville and there be reshipped on a combination of the local in and the local out so far as the traffic went via Nashville.

MR. COMPTON: I will have to answer that in three sections; first, the Nashville route would get from the Ohio River shipments shipped directly to the southeast, that which they would be able to secure by solicitation; second, there would be no business from Nashville; third, the reason why there would be no business from Nashville would be because the rate would be higher on the combination than the direct shipper would pay.

MR. BRANDEIS: You are assuming that the rate into Nashville remains 10 cents, are you not?

A. Oh, yes; he did not ask me about that, but if reshipping arrangements were abolished at Nashville, then, of course, the ten-cent rate from the Ohio River to Nashville would stand. The shipper at Nashville, of course, would be at a disadvantage to the extent of the difference between the sums of the locals and the through rate.

Q. Now, having made this explanation, or argument, will you kindly answer my question?

A. I thought I had, Doctor.

Q. That would be the movement, would it not, either on a through rate from river crossings to the southeast, without stopping at Nashville, or, if

stopped at Nashville, it would be the combination of the rate in and the rate out to the southeast?

A. I see what you mean, Doctor, and I was trying to help you. I would say this: I was trying to show—

JUDGE MACK: I would like to understand the question and answer—what you mean by "Yes," and by the question: I do not understand it. Did you mean to ask him whether, if the rebilling were abolished, the shipments would, in fact, go through Nashville at this rate, or do you mean to ask him whether this would be the rate, if the shipments went through Nashville?

MR. NEEDHAM: I am not asking him about the quantum of the shipment at all, but as to what rates would prevail and how the movements would go.

JUDGE MACK: Those are two different questions. I would like to get clear on the question. I want to know what the answer means, and I cannot know what the answer means, unless I know what the question is.

(Reporter reads the question.)

JUDGE MACK (continuing): That is an entirely different question, Doctor. I do not know which the "Yes" answers, and I would like to be clear.

MR. NEEDHAM: I was asking for an answer to my last question.

JUDGE MACK: Suppose we strike out the question and answer and repeat the question, and know what the question means.

MR. BRANDEIS: That includes the question before your Honor's last question?

MR. NEEDHAM (to reporter): Just repeat the question which I asked.

JUDGE MACK: Which one?

MR. NEEDHAM: The last one.

JUDGE MACK: Repeat the last question, then. Could you not frame the question again, Doctor?

MR. NEEDHAM: I can do it: If the rebilling privilege was taken out at Nashville, or is taken out at Nashville, the traffic from the river crossings to the southeast so far as it passes through Nashville; to that extent would go either on a through billing from the river crossings to points in the southeast without stopping at Nashville, or it would go to Nashville, and from Nashville, on a combination of the rate in and the rate out, would it not? Is that clear?

JUDGE MACK: Perfectly clear.

MR. COMPTON: Yes.

Q. Would it not be true, then, that the competition for the through business from the river crossings to the southeast territory would be driven back to the river crossings, as stated by Mr. Barham?

A. With the Nashville reshipments out, there is no business, and the Ohio River crossings would do the business.

Q. And the business for the railroads would be at the Ohio River crossings?

A. Yes.

Q. Would that competition be any more intense if the rebilling privilege is taken out than it is to-day, as between your road and the other roads leading into the southeast territory from the river crossings?

A. I can not say that it would.

Q. You do not think it would be affected by the taking out of the rebilling privilege at Nashville?

A. I think that unless there were some circumstances arising, that if some change were made in the rate to Nashville that would be the effect.

JUDGE MACK: Let me see if I clearly understand that. You mean, would the competition at the Ohio River points be any greater than it is now at the Ohio River points?

MR. NEEDHAM: Yes; at the Ohio River points—would it be any greater with the rebilling privilege at Nashville taken out than it is to-day with the rebilling privilege in, so far as his road is concerned.

MR. COMPTON: I said I did not think it would.

MR. NEEDHAM: You do not agree, then, with Mr. Barham upon that point?

A. I do not know what Mr. Barham said, or whether that question was put to him. If I understand correctly, you ask me this: If Nashville reshipping is abolished, and the Ohio River points do all the business, will the competition with the Ohio River points be abolished?

Q. As between your roads and the other roads leading into southeastern territory?

A. Now, you are speaking of competition—if you mean competition which would change the rate, I would answer "No," but if you mean this: Would there be more of the railroads after the business because there is more business to ship from the Ohio River because of the abolishment of the reshipping privilege at Nashville, of course there is more than enough to go around, and there would be more people scrambling for it.

Q. That is to say: taking out the rebilling privilege at Nashville would possibly, and you think necessarily, distribute the business which is represented by the storage capacity of Nashville, to the other lines?

A. I will not say "the storage capacity."

Q. Just explain, then, what you mean by increasing the amount of business from the river crossings to the southeast territory by taking out the rebilling privilege.

A. I mean this, Doctor: The fact that rebilling at Nashville was abolished—if it was—would not increase or decrease the consumption in the south to the extent that business ceased to move from Nashville—to that extent would the business be sent backward to the Ohio River for direct shipment to the southeast?

Q. Well, why would it be sent back to the Ohio River for shipment to the southeast by taking out the rebilling privilege?

A. Well, because—the through rates based on the compound of the rate to and from Nashville would make the rate higher than the rate from the river point to the southeast, and, therefore, they could do no business.

Q. If you reduce the rate to seven cents from the Ohio River to Nashville, what would be the result so far as this diversion of the traffic is concerned?

A. It would to the points where the rates from Nashville are now seven cents less than from—

JUDGE MACK: You mean three cents less.

A. Where the rates from Nashville are now 7 cents less, there would be a parity in the rates to the southeastern points of destination. Where the rates from Nashville are 7 cents less than from Cairo and Evansville, the combination on Nashville would be on a parity with the through rate from Ohio River crossings. To the extent the equalizer is different from 3 cents, then to that extent Nashville would be excluded.

Q. That is, where the differential is more than three cents?

A. Not differential; equalizer is more than three cents, or where the differential is less than seven.

MR. NEEDHAM: That is right. As to that business Nashville would still hold the trade if the rate was reduced into Nashville to seven cents.

A. Yes; to the territory I have described, where the rate from Nashville is seven cents less than from the Ohio River points.

Q. And as to those points your road and its connections would be receiving the same amount for the traffic from the Ohio River crossings to the points of destination as it receives now.

A. No.

Q. Why?

A. If you mean: Would we receive the same money for transporting one hundred pounds of grain, I would say "Yes," but if we receive as much

traffic, I do not know, for I do not know who will get it. There are so many after it.

MR. NEEDHAM: I think I covered that in another question.

A. I do not think you did.

MR. NEEDHAM: Very well. As to traffic moving from the Ohio River crossings by way of Nashville to these points in southeast territory where the differential is seven cents to-day, your company would receive upon such traffic as moved the same rates and the same return that it is receiving to-day, if the flat rate of seven cents was put into Nashville.

A. Now, that is another proposition.

MR. NEEDHAM: I thought it was the same.

A. No sir; that is a different thing. I say "No" as to that for this reason: If the shipment should move over the Louisville & Nashville to a point on the Louisville & Nashville, that would be true; that would likewise be true as to a shipment originating on the Nashville, Chattanooga & St. Louis system. To a point beyond the rails of the Louisville & Nashville Railroad and beyond the rails of the Nashville & Chattanooga System, the difference would be this, Doctor, in the one case they would get the proportion of the Ohio River rates, and in the other case they would get their proportion of the Nashville, proper, rate.

Q. The proportion, then, of the Ohio River rate to the southeast territory is different from the proportionals from Nashville to the southeast territory as between the carriers carrying the traffic.

A. That to the proportional on the through business is as the flat rate. On Nashville business we would get the Nashville, proper, rate. There is a difference south of Nashville between the Nashville, proper, rate on Nashville, proper, business, and the proportion accruing south of Nashville on a through rate accruing south of Nashville.

Q. Now, will you not give an illustration which

will show that—Take, for instance, a shipment to some point beyond Atlanta, and from Nashville and to the same point, from the Ohio River crossing—give an illustration of what the difference would be. Take any point you please.

A. Of course you understand, Doctor, I have not that information with me. I cannot remember all the percentages.

Q. Will you furnish that?

A. Yes.

Q. So as to give a concrete illustration of what you mean by the difference your company would receive if it was on a combination of the rate into Nashville and out of Nashville.

A. Certainly.

Q. Rather than on a through rate from the river crossings to the same point of destination—you will furnish that?

A. Yes sir.

Q. The effects of taking out the rebilling privilege at Nashville upon your road would be, first, to increase your competition on through business to the southeast and from the Ohio River crossings, would it not?

A. As to the rate, there would be no change. The competition as affecting that feature of the matter, would be unchanged. So far as the competition of the different carriers; that is, the competition in service, is concerned, one carrier against another, it would be increased.

Q. In the second place; so far as points in the southeast territory, where the differential is more than seven cents—assuming that you reduced the rate into Nashville to seven cents—you would lose the benefits which you now receive from the business activity of the business men or grain dealers of Nashville in securing trade in such territory?

A. Well, the loss, if any, to the Louisville & Nashville Railroad, would be the difference between what it had reshipped, by reshipment at Nashville, and

the amount that it might take up at the Ohio River in the scramble for the business there. What that difference would be, of course, no one could know, or even approximate.

Q. I ask you whether or not your road would not lose the benefits which it now has arising from the zeal and business acumen of the grain dealers at Nashville in securing business at points where the differential is now more than seven cents?

A. We would lose their influence, but how much I can not tell.

Q. Well, would it be considerable, in your judgment?

MR. COMPTON: As I understand the matter, you mean this, Doctor, that if the reshipping at Nashville were abolished, who would do the business, and how much would we get as compared with the conditions under the practice of rebilling?

MR. NEEDHAM: I do not mean that—I am simply speaking of the benefits that your line receives from the activity of the grain dealers at Nashville in seeking business in the southeast territory. Now, is it not a fact, Mr. Compton, that your road and the Nashville & Chattanooga road receive a good deal of benefit in the way of increased traffic by reason of the business zeal and activity of the jobbers and grain dealers at Nashville in seeking business in the southeast territory?

A. I think that is true, Doctor, and you asked me also how much we would lose, and I said I did not know. It would be sent back to the Ohio River for shipment from thence in like amount as now, and in the scramble for business we could not tell how much we could recoup of the loss at Nashville.

Q. If the rate was reduced into Nashville to seven cents, your loss, so far as the benefits you now receive, from the business zeal of the business men at Nashville is concerned, would be confined to those points in the southeast territory where the differential exceeds seven cents?

A. As to that, the difference would be this, as explained before, where the equalizer was more than three cents, Nashville would be excluded; to that extent the reshipping business would be affected. Also, in addition, there would be a loss in the revenue of the carriers up to Nashville to the extent that the business remained in Nashville for local consumption.

Q. Would that local consumption be greater than it is to-day?

A. I cannot tell; I do not know.

Q. Do you think that the consumption of grain at Nashville would be increased by the taking out of the rebilling privilege?

A. I do not think it would make them any more hungry than now; it would make no difference.

Q. You just stated it would make a difference.

A. It would make this difference: On Nashville, proper, business, that I understood you to refer to, we would lose three cents a hundred, whereas under your proposition we would lose three cents a hundred.

Q. You mean the loss occasioned by reducing the rate from ten to seven?

A. That is the best way to put it. Yes, that is true.

Q. In the third place, your loss, as I understand it, would be the loss of business which was reshipped from Nashville upon which you would receive a less amount in proportionals than on the through rate?

A. I have not testified to that because I do not know the difference between the proportion and the through divisions, the divisions applied on through business rather, and I could not even make an approximation on an example of that sort, but I will try to give you what you asked for.

Q. I did not ask for the amount of it.

A. I so understood you.

JUDGE MACK: You asked for the proportionals of rates.

MR. NEEDHAM: I was trying to get at your losses

and the nature of them in case the rebilling privilege was taken out and I said that, as I understood you, your third source of loss would be that upon the shipments from Nashville your proportionals would be less than they would be if it was a through shipment or a shipment on the rebilling privilege as it now exists.

A. Now if you do not want the amount in dollars, do you want the amount in the difference of the rate, or the amount of the business in bushels, pounds, or how?

MR. NEEDHAM: I wanted to be sure that I understood you that all shipments which went to Nashville on a flat rate of seven cents, after the rebilling privilege was taken out and were shipped out from Nashville on the local from Nashville to points in the southeast that your proportion on that business would be less than your proportional upon the through business so far as the business from Nashville is concerned.

A. I must confess, Doctor, that I do not understand that question.

MR. NEEDHAM: I understood you, in the first place—Am I mistaken in understanding you to have testified that the proportionals on the business from Nashville into the southeast territory—

JUDGE MACK: (interrupting) Beyond your own line.

MR. NEEDHAM: (continuing) into the southeast territory are less to your company than they would be for the same haul on through billing from the river crossings to the same points in the southeast territory—that is what I asked him to give the figures for.

A. Oh! He asked me if I would furnish the figures to show what—using a representative point of destination—would be the proportions accruing under a pro-rate north and south of Nashville as compared with seven cents into Nashville—for the northern proportion above Nashville and the local applied

south of Nashville, if the factors, being seven cents in and the local out. I said I would furnish that.

Q. Is it a fact that the combination of the seven cents and your proportion of the local out would be less than your proportional of the through rate?

A. Less: Where? Above Nashville, or below?

JUDGE MACK: The total.

MR. NEEDHAM: The total revenue; would it be less than the proportional you now receive?

A. The destination on the Louisville & Nashville Railroad would be the same, Doctor.

JUDGE MACK: That is why I inserted in the question: "To points beyond your own lines."

MR. COMPTON: To points beyond our own lines the difference would be this: The difference between a pro-rate of the Nashville rate over the number of miles that the business moves as compared with the pro-rate of the Evansville rate over the same rails to the same destination.

JUDGE MACK: The Doctor asks, Which is the greater.

MR. COMPTON: Which is the greater?

MR. BRANDEIS: May I ask a question and get at just the information we desire?

MR. NEEDHAM: I think I can get this.

MR. COMPTON: I will ask you, if you please—I have no percentages with me and will have to make a lot of calculations which I can do and if it is reasonable for me to ask that I be allowed to furnish this I shall be glad to do so.

JUDGE MACK: Would it always be greater or less, or might it vary according to the point?

A. It would vary.

Q. It might be greater to one and less to the other?

A. It might; yes.

MR. NEEDHAM: Not a constant factor at all?

MR. BRANDEIS: The Louisville & Nashville above Nashville would not, then, on a through rate, absorb, and thus bear the whole of the equalization?

A. Certainly not; but that is not what I under-

stand the Doctor is after. Judge Mack has asked me the last question. Now, I will make a statement.

JUDGE MACK: As I understand the question—and it is important that I should understand it—it is this: If you abolish the reshipping practice and have a seven-cent rate into Nashville, would your company get out of the total amount paid for this shipment into Nashville and the shipment out of Nashville to points beyond your own line, a larger amount than it gets to-day on the through rate from the Ohio River point with the rebilling privilege to that same point of destination? Is that your question, Doctor?

MR. NEEDHAM: That is it.

MR. COMPTON: If your Honor please; of course the proportions would be variable, using Evansville to illustrate, from Montgomery to the southeast, would vary according to mileage; also would the rate to Nashville, if pro-rated the same way, vary; hence the Nashville proportions would vary with the Evansville proportions, which would be greater or less. I will have to work this out and show you.

MR. NEEDHAM: You mean the proportionals vary without reference to the distance hauled?

A. No, I do not mean to say that at all.

Q. Where the distance is over your own line and one other line to points on that line, is the proportional the same, or does it vary according to distance?

A. According to distance; or, when we make fixed rates, after they are fixed, we then undertake to deal with our connecting lines, to divide such rates.

Q. What I would like to have you show by those figures which you are to produce, is this: What would be the effect upon the revenues of your road by taking out the rebilling privilege as to that traffic which actually moved into Nashville on a flat rate of seven cents, and then moved out of Nashville on the local, from Nashville to points beyond your line, and you may give us as many points as you choose, that will fully illustrate that, both as to

points where there is a gain, if any, and where there is a loss, if any.

A. I shall be glad to make such a memorandum.

Q. I would like to know if that is clearly understood?

A. So far as I am concerned, I understand the facts.

JUDGE MACK: Is Macon, Georgia, on your own line?

A. No sir.

JUDGE MACK: Let us take an example, then, to test whether we have it correctly. Take the rate to Macon, Ga., say, from Evansville.

MR. COMPTON: Twenty-six cents, sir.

JUDGE MACK: Twenty-six cents from Evansville; and what is the Nashville rate?

A. Seven cents less—19 cents.

JUDGE MACK: The Nashville rate is 19 cents. Now, you get out of this a certain proportion of 26 cents?

A. Yes sir.

Q. Is that based upon your mileage?

A. 185 miles to Nashville; 151 to Chattanooga; 138 miles to Atlanta; and 100 miles—

JUDGE MACK: From Atlanta to Macon. Then you get a proportion on the mileage, do you?

A. Yes sir.

JUDGE MACK: I understand the figures you have given. Now, then, if the rebilling were abolished, and the rate into Nashville were reduced to seven cents, you would in the first place, get the entire seven cents; then, you would get a proportion of the 19 cents from Nashville to Macon that your mileage from Nashville bears to the total mileage from Nashville to Macon—that your mileage south over which the stuff goes bears to the entire mileage from Nashville to Macon on the figures you have given?

A. That is true, may it please your Honor, except when you say—

MR. BRANDEIS: In fact, the Louisville & Nashville does not extend beyond Nashville on that route.

JUDGE MACK: Or, if you take some example of some town where you do go south of Nashville a part of the way, that would illustrate it better.

MR. COMPTON: I can make these figures for you if you would like to have them.

JUDGE MACK: I do not care for them. I understand it.

MR. NEEDHAM: Can you give the proportionals as to that point?

A. I can.

JUDGE MACK: That is not a good example, because the Louisville & Nashville does not carry to any point south. Take some point off his own line.

MR. BRANDEIS: I mean some point reached by the Louisville & Nashville south of Nashville.

MR. COMPTON: I do not know as to those constructive mileages. I do know that the illustration presented by Judge Mack is probably the simplest we can find and if he will let me use Paducah, Kentucky, on the Nashville, Chattanooga & St. Louis through to Atlanta on the same rate and via the Central of Georgia, we can make it in a few moments.

JUDGE MACK: Then give us that. Make it out during the luncheon period.

MR. NEEDHAM: All I want is something clearly to show the loss, if any, to your line by reason of taking out the rebilling privilege.

MR. COMPTON: I will furnish that example after the noon recess.

MR. NEEDHAM: Can you state how much tonnage in grain your road handles, through Nashville that is stopped at Nashville under the rebilling privilege, per annum?

A. No sir.

MR. NEEDHAM: I think that is all, your Honor.

Illustrative Case.
(Furnished by Mr. Compton.)

Paducah to Macon.

Through pro-rate via Nashville.

TO MACON.

To	Miles.	Per cent.	Rate
Nashville	185	32.2	8.4c
Chattanooga	151	26.1	6.8
Atlanta	138	24.4	6.3
Macon	100	17.3	4.5
Paducah to Macon	474	100	26

Using local of 7 cents to Nashville.

To	Miles	Per cent	Rate	Rates
Nashville arbitrary	....	....	7	7
Chattanooga	151	39	7.4	
Atlanta	138	35.46	6.7	19
Macon	100	25.54	4.9	
	389	100	26	26

(Reporter's Note: Under date of December 8, 1911, Mr. Albert S. Brandeis, General Solicitor for the Louisville and Nashville Railroad Company, transmitted by mail the following, with the request that the reporter include same in record. The matter was sent to the clerk of the Commerce Court and by him handed to reporter.)

IN THE UNITED STATES COMMERCE COURT.

In Equity. No. 47.

Louisville & Nashville Railroad Company and Nashville, Chattanooga & St. Louis Railway, *Petitioners.*

Versus

United States of America, *Respondent*, and Interstate Commerce Commission, and W. S. Duncan & Company, *Intervening Respondents.*

Illustrative cases of divisions of joint rates on shipments from the Ohio River crossings via Nashville to Georgia destinations, compared with use of local rate of seven cents from Ohio River crossings to Nashville, Tennessee, to be incorporated in the testimony of C. B. Compton, taken herein on November 29th, 1911, before the Honorable Julian W. Mack, pursuant to request of Counsel for Respondents.

Divisions of rates on grain from Ohio River crossings, via Nashville, Tenn., secured by application of through percentages to the dividing point, compared with use of local rate of 7 cents from Ohio River crossings to Nashville, Tenn.

From Evansville, Ind.

Inbound via L. & N. R. R. and outbound via L. & N. R. R.

To		Thro' Miles	Pro rate Rate		Using rate to Nashville Miles	Rate
Columbus, Ga.	To Nashville	185	7.5	To Nashville	x	7
	Montgomery	305	12.4	Montgomery	305	12.7 | 19
	Columbus	150	6.1	Columbus	150	6.3 |
			26c			26c.
Macon, Ga.	To Nashville	185	7	To Nashville	x	7
	Montgomery	305	11.6	Montgomery	305	11.6 | 19
	Macon	194	7.4	Macon	194	7.4 |
			26c			26c.
Cordele, Ga.	To Nashville	185	8.4	To Nashville	x	7
	Montgomery	305	13.7	Montgomery	305	14.7 | 22
	Cordele	152	6.9	Cordele	152	7.3 |
			29c			29c
Albany, Ga.	To Nashville	185	8.2	To Nashville	x	7
	Montgomery	305	13.5	Montgomery	305	14.3 | 22
	Albany	164	7.3	Albany	164	7.7 |
			29c			29c
Valdosta, Ga.	To Nashville	185	7.2	To Nashville	x	7
	Montgomery	305	11.9	Montgomery	305	12 }
	Cordele	152	5.9	Cordele	152	6 } 24
	Valdosta	x	6	Valdosta	x	6 }
			31c			31c
Dublin, Ga.	To Nashville	185	6.6	To Nashville	x	7
	Montgomery	305	11	Montgomery	305	10.8 | 22
	Dublin	319	11.4	Dublin	319	11.2 |
			29c			29c
Montezuma, Ga.	To Nashville	185	7.4	To Nashville	x	7
	Montgomery	305	12	Montgomery	305	12.3 | 24
	Americus	140	5.6	Americus	140	5.7 |
	Montezuma	x	6	Montezuma	x	6
			31c			31c

Divisions of rates on grain from Ohio River crossings, via Nashville, Tenn., secured by application of through percentages to the dividing point, compared with use of local rate of 7 cents from Ohio River crossings to Nashville, Tenn.

From Cairo, Ill., to Paducah, Ky.

Inbound via N. C. & St. L. Ry. and outbound via N. C. & St. L. Ry.

To		Thro Miles	Pro-rate Rate		Using 7c to Nashville Miles	Rate	
Columbus, Ga.	To Nashville	185	7.5	To Nashville	x	7	
	Chattanooga	151	6.2	Chattanooga	151	6.3	19
	Atlanta	138	5.5	Atlanta	138	5.7	
	Columbus	166	6.8	Columbus	166	7	
			26c			26c	
Macon, Ga.	To Nashville	185	8.5	To Nashville	x	7	
	Chattanooga	151	7	Chattanooga	151	7.6	19
	Atlanta	138	6.4	Atlanta	138	6.8	
	Macon	90	4.1	Macon	90	4.6	
			26c			26c	
Cordele, Ga.	To Nashville	185	7.7	To Nashville	x	7	
	Chattanooga	151	6.2	Chattanooga	151	6.6	22
	Atlanta	138	5.7	Atlanta	138	6	
	Macon	90	3.8	Macon	90	3.7	
	Cordele	131	5.6	Cordele	131	5.7	
			29c			29c	
Albany, Ga.	To Nashville	185	7.7	To Nashville	x	7	
	Chattanooga	151	6.2	Chattanooga	151	6.4	22
	Atlanta	138	5.7	Atlanta	138	5.9	
	Macon	90	3.7	Macon	90	4	
	Albany	137	5.7	Albany	137	5.7	
			29c			29c	
Valdosta, Ga.	To Nashville	185	6.9	To Nashville	x	7	
	Chattanooga	151	5.7	Chattanooga	151	5.6	
	Atlanta	138	5.1	Atlanta	138	5	
	Macon	90	3.3	Macon	90	3.4	24
	Tifton	105	4	Tifton	105	4	
	Valdosta	x	6	Valdosta	x	6	
			31c			31c	
Dublin, Ga.	To Nashville	185	8.2	To Nashville	x	7	
	Chattanooga	151	6.6	Chattanooga	151	7	
	Atlanta	138	6.1	Atlanta	138	6.4	22
	Macon } Dublin }	186	8.1	Macon } Dublin }	186	8.6	
			29c			29c	
Montezuma, Ga.	To Nashville	185	8.5	To Nashville	x	7	
	Chattanooga	151	7	Chattanooga	151	7.6	
	Atlanta	138	6.4	Atlanta	138	6.8	
	Macon	90	4.1	Macon	90	4.6	24
	Montezuma	x	5	Montezuma	x	5	
			31c			31c	
Athens, Ga.	To Nashville	185	7.4	To Nashville	x	7	
	Chattanooga	151	6.1	Chattanooga	151	6.3	
	Atlanta	138	5.6	Atlanta	138	5.7	19
	Athens	171	6.9	Athens	171	7	
			26c			26c	

MR. WIMBISH: Mr. Compton, I find that in referring to your testimony before the Commission I did not state accurately its effect, and I desire to correct it by repeating to you the extract to which I referred. If the Nashville shipper brought his grain into Nashville by river from Cairo, he would be compelled to pay the cost of the transfer plus the boat or barge charges at Nashville, plus the cost of transferring the grain from the wharf at Nashville to the warehouse, elevator or depot at Nashville; suppose the Nashville proper rate of 17 cents per hundred pounds to Atlanta and the total aggregate charges are arrived at, would not the rate under present conditions be perhaps in excess of the Cairo to Atlanta rate of twenty-four cents per hundred pounds which his competitor would pay?

A. I think that is a possibility, Mr. Wimbish; still we have not eliminated the competition of the Cumberland River.

MR. BRANDEIS: Mr. Compton, in all this examination of you by Dr. Needham, which at one stage was somewhat confused, there was no mention made of the loss of local business that the Louisville and Nashville would suffer if the rebilling were abolished and the rate into Nashville from the Ohio River crossings were reduced to seven cents.

A. I said, Mr. Brandeis, that the Louisville and Nashville Railroad would lose three cents per hundred pounds on the business consumed locally at Nashville, and Dr. Needham asked me how much was consumed there and I told him I did not know. I did say to him that I did not think the consumption would be increased.

Q. But there would be that loss to the railroad company then?

A. Yes sir.

Q. Now, Mr. Compton, with respect to the new railroads that have been built into the Carolinas, when was the Jellico route established, approximately?

A. What is known as the Jellico route is the line leading from Louisville and Cincinnati south through Knoxville, Tennessee, etc., to the Carolinas. The Knoxville and Ohio Railroad, now a part of the Southern Railroad, was built from Knoxville to the Tennessee state line. The Louisville and Nashville went south to it. That line was completed in 1884 and opened for business. It then became the short line to Knoxville and the short line to the Carolina territory from the upper Ohio River crossings.

Q. There also have been constructed the Chesapeake & Ohio Railroad and the Norfolk & Western into the Carolinas or reaching the Carolinas, have there not?

MR. COMPTON: From where?

Q. From the Ohio River crossings, from Cincinnati and Louisville with their connections?

A. Well, the Chesapeake & Ohio Company completed its line from Huntington, West Virginia, on the Ohio River to Cincinnati about the same time. Later a connection was made between the Louisville and Nashville Railroad and its Cumberland Valley Division through Cumberland Gap with the Norfolk & Western Railroad in Virginia. The Norfolk and Western Railroad later acquired some lines from Roanoke south to West Salem, North Carolina, and from Lynchburg to Durham. To those the upper Carolinas the short route is through the Virginia cities to the middle part.

Q. Middle part of what?

A. Of the Carolinas. North Carolina is through Knoxville and by the Jellico route. Prior to the construction of the roads just named, the short or working route through that section was through Nashville.

Q. The Chesapeake and Ohio also connected from Louisville to Huntington, West Virginia, did it not?

A. Yes sir.

Q. Now, Mr. Compton, at the time the supplemental report of the Commission was handed down

on which the order which is involved in this case was entered, reshipping on Memphis gateway, grain at Nashville had been discontinued, had it not?

A. I cannot give you the date, Mr. Brandeis. I do not know the date of the supplemental order nor the date such was discontinued.

MR. NEEDHAM: The report of the Commission shows that.

MR. BRANDEIS: At that time the reshipping on Cincinnati grain at Nashville had also been discontinued, had it not?

A. As to Cincinnati, yes.

Q. So that the order here in this case now under consideration had nothing to do with Cincinnati reshipment or Memphis reshipment at Nashville?

A. No sir.

Q. Now, if the reshipping were abandoned at Nashville and the local rate into Nashville were reduced to seven cents the combination of that seven cents into Nashville with the present local rate from Nashville to the Georgia points would not exceed the present through rate via Nashville on direct shipments or reshipments, would it?

A. No, the totals would be the same.

Q. The totals would be the same. In that event on shipments moving from the Ohio River to Nashville on the seven cent rate the rail carrier bringing the shipment into Nashville would bear the entire burden of the reduction from the ten to the seven cent basis on the local shipment into Nashville, would it not?

A. Yes sir.

Q. And the carrier from Nashville originating at Nashville on the local rate out of Nashville, a shipment to a southeast point would share in that local rate according to its mileage on that transportation service, would it?

A. Yes.

JUDGE MACK: That has all been gone over and testified to very clearly.

MR. BRANDEIS: It did not seem very clear to me, may it please your Honor, but I will pass on to the next. Are you familiar with the case heard before the Interstate Commerce Commission known as No. 1671, opinion number 1401, under the style A. P. Morgan Grain Company, *et al.*, versus Atlantic Coast Line Railroad Company, *et al.*, decided October 15, 1910?

A. Yes sir, I testified in that case.

Q. Is it not a fact that in that case the Commission sustained as not unjust or unreasonable the rates from Ohio River crossings to Atlanta and through southeast Georgia destinations which are now in effect?

(Mr. Needham and Mr. Esterline object, saying the report shows this.)

JUDGE MACK: Yes. Was there any dispute about it?

MR. ESTERLINE: It is a public document.

MR. BRANDEIS: I just want to let him say what he knows.

MR. NEEDHAM: The reports need not be certified.

JUDGE MACK: I can sustain the objection because it is not a proper way to get in the fact.

MR. BRANDEIS: May it please your honor, I think the objection is well taken, only it means much more trouble to bring the matter into the case.

JUDGE MACK: You have the report right there; offer it.

MR. BRANDEIS: That was a case that involved an objection to an advance in rates, was it not?

A. Yes sir.

Q. Mr. Compton, you have stated that the reshipping practice at Nashville was shown by the records of the Louisville and Nashville Railroad Company to have begun in the year 1897. Simply for the purpose of refreshing your recollection on that,

is it not rather the fact that the records show it existed at that time?

A. I stated that the records of the Louisville and Nashville Railroad show that it was in effect in 1877. The question was 1897.

MR. BRANDEIS: Of course I meant 1877, Mr. Stenographer. Have you any knowledge or information as to the practice having been pursued prior to 1877?

A. Personally I have not. As I said before, judging from the necessities it was certainly believed by me that it did exist prior to that time.

Q. The equalization or protection of the through rate on reshipments from Nashville is directly dependent, is it not, upon the size of the existing local rate from Nashville to the destination?

A. Yes sir.

Q. Is there any case of a rate to a destination within the state of Georgia outside of the coast basing points to which the equalization is greater than three cents?

A. Not to my knowledge.

Q. Have the complaining Georgia points in this proceeding before the Commission under consideration in this case an interest in the size of the local rate from Nashville to any of the other points of destination that have been mentioned here where the equalizer is greater than three cents?

MR. NEEDHAM: Objection. I may say that depends on the sphere of influence of Atlanta as a trade point,—just how far the Atlanta dealers are reaching out whether they go beyond the state of Georgia or not.

JUDGE MACK: He can give his opinion.

MR. NEEDHAM: He was not asked that. The question was a direct one.

MR. BRANDEIS: I would like to have him give a positive statement or opinion.

MR. COMPTON: I will answer No.

JUDGE MACK: I suppose your Atlanta witnesses will answer Yes.

MR. BRANDEIS: I think not.

JUDGE MACK: Is that all?

MR. BRANDEIS: That is all, may it please your Honor.

MR. McCONNICO: May it please your Honor, under the stipulation signed by all the counsel in the case with respect to the admission in evidence here in affidavit form instead of by oral production of the evidence reserving to the Government and also all parties all rights to except for irrelevancy, immateriality or incompetency, I offer three affidavits.

MR. ESTERLINE: Do you state the names of each witness?

JUDGE MACK: He says subject to your objection.

MR. McCONNICO: I first offer the stipulation we have signed.

JUDGE MACK: They are offered under that stipulation.

MR. ESTERLINE: That contains the statement that we may object. We do object as to each one.

JUDGE MACK: All right.

MR. McCONNICO: These three affidavits in order that they may be tied into this record with some affirmative word to identify are the papers of Shakleford, Wilkes and S. S. Kennedy.

MR. ESTERLINE: They are objected to as incompetent, immaterial and irrelevant.

JUDGE MACK: That is all in the record.

MR. McCONNICO: And I desire to have this stipulation and three affidavits filed in the record, copied after the testimony of my last witness and that is just before Mr. Barham's testimony.

JUDGE MACK: Very well; anything else on behalf of the petitioners?

H. T. MOORE.

(The witness H. T. MOORE was sworn by Judge Mack.)

MR. WIMBISH: Mr. Moore, state your name and residence to the reporter.

A. H. T. Moore, Atlanta, Georgia.

Q. What is your occupation, Mr. Moore?

A. Traffic manager of the Atlanta Freight Bureau.

Q. What are your duties as such traffic manager in connection with rates and rate adjustments?

A. The purpose of the Association is to secure an equality of rates in and out of Atlanta as compared with competing markets.

Q. What railroad experience have you had, if any, and what experience have you had in connection with rates and rate making?

A. I spent ten years from the year 1890 to 1900 in the service of the Southern Railway in agency work, and the past ten years as Traffic Manager of the Atlanta Freight Bureau. During that time I have been a student and have studied the rates in and out of Atlanta as compared with other points.

Q. Mr. Moore, have you prepared a statement showing the rates from the several Ohio River crossings into the southeast including Carolina territory and Alabama, showing the combination on Nashville as well as the through rates via Nashville?

A. I had it prepared under my direction.

Q. Have you that?

(Witness produces paper.)

Q. Mr. Moore, I shall not examine you in any detail on this statement, as I think probably it speaks for itself, but I ask that this be called Exhibit No. 1. These figures were taken from the tariffs on file with the Commission, Mr. Moore?

A. They were.

Q. Mr. Moore, as illustrative of the situation and discrimination, if any, will you please state the relative situation of a dealer in Atlanta and a dealer in Nashville, both desiring to sell at East Point in

Georgia, stating where East Point is and its relation to Atlanta?

A. The rate from Ohio River crossings—through rate from Ohio River crossings to Atlanta and East Point is twenty-four cents for one hundred pounds.

Q. Explain what disadvantage the Atlanta dealer would suffer as compared with the Nashville dealer in making sale and delivery to East Point of grain transported from Ohio River crossings.

A. To illustrate this proposition, taking a car of grain weighing 40,000 pounds, it would cost the Atlanta dealer fourteen dollars from Atlanta to East Point, plus a switching rate of two dollars a car, making sixteen dollars that the Atlanta dealer would be at a disadvantage as compared with the dealer at Nashville; in addition to the sixteen dollars he would be at a disadvantage of three-quarters of a cent per one hundred pounds on account of an allowance made at Nashville by the warehouse in Nashville having sacking facilities. That would, on a 40,000 pound car, amount to six dollars, making a total of twenty-two dollars per car of 40,000 pounds that the Nashville dealer would have over the Atlanta dealer.

Q. Where is East Point situated relatively to Atlanta?

A. It is six miles south of Atlanta located on the Central of Georgia.

Q. You mean six miles south of the center of Atlanta?

A. Yes, from the center of Atlanta.

JUDGE MACK: Where is that two dollars switching charge? In Atlanta?

A. In Atlanta. No switching charge at Nashville.

MR. WYMBISH: Give an illustration, Mr. Moore.

JUDGE MACK: Pardon me a moment. Would you get rid of that switching charge if they put in the rebilling practice?

A. Yes.

MR. WYMBISH: And would you also be allowed under the practice at Nashville if a similar practice

was established in Atlanta this sacking charge of six dollars?

JUDGE MACK: Under the orders as now made by the Commission?

MR. WIMBISH: If the privilege is extended to Atlanta as it existed at Nashville.

JUDGE MACK: I ask whether this privilege is embraced in this order. This order does not say anything about sacking. The rebilling alone would not grant the three-quarters of a cent allowance on sacking, would it, under the present order?

MR. WIMBISH: I do not think so, your Honor, to be frank. I will not insist on that. What would be the difference, Mr. Moore, eliminating the sacking charge?

A. It would be sixteen dollars per car in favor of Nashville.

Q. Now a great deal has been said about Social Circle. Where is Social Circle?

A. It is a point located about forty or fifty miles southeast of Atlanta on the Georgia Railroad.

Q. Is it a local station?

A. Local station.

Q. What is the size of the town?

A. One or two thousand I should say, a couple thousand.

Q. Any wholesale or jobbing houses there?

A. I think not.

Q. You heard Mr. Barham's illustration based on Social Circle. What comment have you to make on that, Mr. Moore?

A. The through rates from Ohio River crossings to Atlanta are twenty-four cents, the local rate from Atlanta to Social Circle is eight cents. Nashville grain competing with the Ohio River gateways may be delivered at Social Circle for thirty-two cents. Atlanta would be at a disadvantage of two dollars switching in Atlanta on every car that went to Social Circle, and what is true of Social Circle applies to every other local point on a line other than that

upon which the warehouse of the Atlanta dealer was situated. We have three grain dealers located on the Western and Atlantic Railroad who are parties to this proceeding. If every one of those dealers were to compete with Nashville they would be at a disadvantage of two dollars on every car.

MR. CALLAWAY: By what line did you bring it in?

A. Regardless of how it is brought in. The three dealers are located on the line of the Western and Atlantic Railway; Social Circle being located on the Georgia Railroad, it would be necessary to pay the switching charge, and that would be true of every point in Georgia unless a dealer was located on the line on which the local point was situated.

JUDGE MACK: Let me ask is there a switching charge in Nashville if the goods come in and go out by a different route, for instance coming in on the Louisville and Nashville and going out on the Nashville, Chattanooga and St. Louis?

A. That would be considered competitive traffic; the Nashville, Chattanooga and St. Louis would consider that competitive traffic and would deliver it anywhere in Atlanta on a free switching charge.

Q. I mean at Nashville?

A. No, no charge there on an outbound movement. That movement would be considered competitive going south of Chattanooga because if a wholesale dealer had wished that shipment to go down to Atlanta via the Southern Railway, either of the lines would absorb the switching charge and would thereby get an opportunity to haul it south of Chattanooga.

Q. Mr. Moore, will you take an illustration in Carolina territory, taking the rate from the Ohio River through Nashville under the rebilling practice and the rate on the Atlanta combination and show the disadvantage under which Atlanta suffers?

A. The through rate from Louisville to Greenville, South Carolina, via Nashville is thirty-five cents. The rate from Louisville to Atlanta is

twenty-four, and the rate from Atlanta to Greenville is sixteen cents, making a total of forty cents against the through rate via Nashville of thirty-five cents.

MR. WIMBISH: The disadvantage, then, is five cents per hundred pounds?

A. Five cents.

Q. Do Atlanta merchants trade in Carolina territory?

A. They try to.

Q. Is it tributary to Atlanta?

A. It is.

JUDGE MACK: You mean a market for Atlanta jobbers or manufacturers?

A. Jobbers.

JUDGE MACK: I think we will suspend here until two o'clock.

WEDNESDAY AFTERNOON SESSION.

MR. MOORE: I desire at this point to correct my statement made before lunch relating to the amount of elevation allowed at Nashville on the basis of three-quarters of a cent on a car of 40,000 pounds. I stated the amount to be six dollars; it should be three.

MR. WIMBISH: Mr. Moore, please state briefly and in your own words the actual discrimination that exists against Atlanta and the other Georgia points by reason of this rebilling at Nashville.

JUDGE MACK: Did he not state that and give an example of Social Circle and other points?

MR. WIMBISH: I refer to common points.

JUDGE MACK: Common points; all right.

MR. MOORE: Taking Newman as an example, the through rate from the Ohio River crossings to Newman, Georgia, via Nashville, with rebilling at that point, is 29 cents; the rate to Atlanta is 24 cents, plus the local of seven and one-half cents, which

makes a through rate the Atlanta dealer would have to pay of 31½ cents, making a 2½-cent lower rate via Nashville than via Atlanta, and making a total of ten dollars a car.

MR. WIMBISH: Would switching be in addition to that?

A. That is considered a competitive point. Newman is located on the Atlanta & West Point and the Central of Georgia, 38 miles from Atlanta. Take another point, Griffin, Georgia: The through rate to Griffin, Georgia, from the Ohio River, rebilling at Nashville, is 29 cents. The combination on Atlanta costs the Atlanta dealer 32 cents, with three cents per 100 pounds in favor of the dealer at Nashville, making a total charge of twelve dollars per car that the Nashville dealer will have over the Atlanta dealer.

MR. WIMBISH: Now, Mr. Moore, I will get you to refer to the Nashville situation and state, if you will, in what way the through rate may be defeated at Nashville under the rebilling privilege.

A. I have made a little diagram there, your Honor, (Hands paper to Judge Mack). In the through rate from Louisville, Kentucky, and Evansville and Cairo shows a difference of two cents in favor of Louisville to Carolina territory. Take Greenville, South Carolina, as an illustration: The rate from Cairo to Greenville, South Carolina, is 37 cents per 100 pounds; the through rate from Louisville to Greenville, South Carolina, is 35 cents per 100 pounds; from all the Ohio River crossings to Atlanta territory the rate is 24 cents per 100 pounds. If a dealer in Greenville, South Carolina, was in the market, say, for seed corn, and he wired Cairo, Louisville and Nashville dealers for quotations, if Cairo was long on seed corn today, and he undertook to purchase that corn in Cairo, it would cost him 37 cents per 10 pounds. Nashville, having that same corn in storage and having corn from both gateways, Cairo and Louisville, he could take a Louisville ex-

pense bill and ship the corn—the Cairo corn—to Greenville, South Carolina, for 35 cents, and defeat the through Cairo rate. He could undersell the Cairo man two cents per 100 pounds. Suppose, the same day, Atlanta is in the market for corn, say No. 2. That corn will originate at Louisville. He could substitute a Cairo expense bill and send the Louisville car to Atlanta for 24 cents, the rate from Cairo and Louisville to Atlanta being the same; he could defeat the rate by two cents by the substitution of those expense bills at Nashville.

MR. CALLAWAY: I object to this as immaterial.

JUDGE MACK: I do not see in the first place how that is a discrimination.

MR. MOORE: I will show you, your Honor. He has two cents advantage on those two transactions. Now he can cut the rate one cent, making a lower delivery price of one cent to Greenville, and he can cut the Louisville price one cent and he can secure both cars.

JUDGE MACK: I can understand how Cairo might object, but I cannot understand how Atlanta might object to that.

MR. MOORE: If a man at Nashville can undersell us by one cent a hundred pounds by the manipulation of these expense bills, of course he has an advantage which we have not.

JUDGE MACK: Undersell you, where?

MR. MOORE: In Atlanta.

JUDGE MACK: Oh, your argument then is that because of the possibility of this manipulation, the rebilling should be abolished absolutely?

MR. WIMBISH: It is in answer to that allegation in the petition that the purpose and effect of rebilling is simply to equalize the Nashville with the Ohio River crossings. We say that is not true because, instead of equalizing Nashville with the Ohio River crossings, it puts it on the basis of the most favored crossing.

JUDGE MACK: You would be in the same position if

you got the rebilling. Suppose they comply with the order and give you rebilling privileges?

MR. MOORE: It would be the same situation, because in the rate from Louisville, Cairo and Evansville to all Carolina territory there is two cents difference; that would apply if we had rebilling; we would ship on those rates, too.

MR. MCCONNICO: Then, you could manipulate?

MR. MOORE: I say that by this present adjustment a man at Nashville has the advantage of us by underselling our own trade in Atlanta.

MR. MCCONNICO: I do not understand, may it please the Court, that the possibility of manipulation is now in this case, because this order can be satisfied, may it please the Court, by putting in these same privileges at the complaining Georgia points, and if it is improper at Nashville because of a mere possibility of manipulation, not shown to be actually practiced, and because of insufficient policing that same thing could be done at Atlanta, admittedly, if the order were obeyed.

MR. MOORE: It could not be done to the same extent, because the rates from all Ohio River crossings to Atlanta are the same and the manipulation is not possible at Atlanta, if the rebilling is extended.

JUDGE MACK: I do not understand that the rates from all Ohio River points to Nashville are the same. The rates from all Ohio River points to Greenville are not the same, and so, if through Atlanta or Nashville to Greenville, there would be the possibility of two different rates, and you could manipulate as well as they.

MR. MOORE: That is true, your Honor, but by extending this privilege to Atlanta, they are wiping out this advantage that they now have.

JUDGE MACK: Yes.

MR. MOORE: Now, that may not be unlawful. Probably the man did not know that he was doing that for the reason that the grain at Cairo and Louisville is

put in the same bin and is the same grain. He may pick up one bill and use the very grain that came from Louisville or Cairo; that may be possible.

MR. NEEDHAM: There is no attack on the legality of that act, as I stated yesterday. It is a practice prevailing at the rebilling points; when a dealer makes a sale of grain, he selects from his stock of bills on hand the one with the lowest rate, and he has a right to do it. No one questions it; it is legitimate.

JUDGE MACK: Certainly; when he does that, does it not follow, in theory at least, that the grain shipped to Greenville is Louisville grain, because he has that on hand?

MR. NEEDHAM: No matter what the theory of origin is, he gets a lower rate.

JUDGE MACK: Of course, the Nashville dealer who wants to sell in Greenville will buy in Louisville and not Cairo, because there is two cents difference.

MR. NEEDHAM: Provided, may it please your Honor, the price is the same.

JUDGE MACK: Oh, certainly, but you cannot tell anything about the price at the time this order comes from Greenville.

MR. NEEDHAM: If the dealer knows, he is sure to take advantage of it. Now, it is an advantage in favor of a rebilling point that does not exist in favor of a non-rebilling point, and to extend this privilege puts them on an equality or to take out the privilege puts them on an equality. This is not a question of transportation, but a question of discrimination between localities.

MR. WIMBISH: In other words, if there is manipulation in it, if they extend the privilege then they remove the discrimination; or, if they abolish the privilege, the discrimination against us is relieved.

JUDGE MACK: Yes.

MR. WIMBISH: Proceed, Mr. Moore.

MR. MOORE: I have finished with that.

MR. WIMBISH: Is there anything else you care to say, Mr. Moore? If so, state it.

MR. MOORE: The defendants in this case have stated that this matter could be cured—Atlanta's complaint could be cured—by the establishment of a flat rate of seven cents into Nashville.

MR. WIMBISH: You mean the complainants.

MR. MOORE: (Continuing) Under the rebilling circular of the Louisville & Nashville Railroad, they rebill grain going through the Ohio River gateways to local stations south of Nashville. If a flat rate of seven cents were established from all those Ohio River crossings into Nashville it would reduce the rate from Cincinnati to all local points on the Louisville & Nashville Railroad two cents, for this reason: Take points taking a 24-cent rate from Cincinnati; the rate from Louisville being two cents less would make a rate of 22 cents; the rate from Nashville, say, to Birmingham, or to Montgomery, is 15 cents, plus 7 cents, which would cut the Cincinnati rate to the Louisville rate of 22 cents. Now, in Carolina territory, the reverse is true. The rate from Louisville is two cents less. Under the rate from Cairo and Evansville into Carolina territory, it would be impossible to put in a flat seven-cent rate or any other rate, if the Ohio River crossings were equalized. The same principle would apply by reducing or shrinking the rate south of Nashville for the reason that into Carolina territory it would take two sets of rates from Nashville into Carolina territory, the difference being two cents. If they have a flat rate of seven cents from Cairo into Nashville in order to protect the through rate into Carolina territory, they must have a two-cent rate higher on Louisville business than on Cairo and Evansville; in other words, if it were possible in any way to equalize the through rate by shrinking the rate into Nashville, it would be necessary to reduce the rate as low as two cents from all the Ohio River crossings. It would have the effect—the seven-cent rate into Nashville would have the effect—of advancing the rates to Chattanooga and to Knoxville two cents;

it would advance the rate to the coast points one cent; and it would reduce the rate from Cincinnati to Montgomery territory two cents.

MR. WITHERSPOON: Anything else you want to say?

MR. MOORE: I have illustrated the disadvantage the Atlanta dealers have to all local points basing on Atlanta in the Social Circle illustration, which would be two dollars per car.

MR. CALLAWAY: Mr. Moore, where is your authority, or from whom do you quote when you say the carriers have stated this difference would be all settled by making the rate of seven cents down to Nashville?

A. It was argued before the court on the question of the injunction to enjoin this order that this matter could be cured by putting in a flat rate of seven cents.

Q. Did you hear it?

A. I was present.

Q. Dr. Needham offered it, did he not?

A. I think the other side.

MR. WITHERSPOON: That is all.

Cross-examination.

MR. CALLAWAY: In regard to the example you gave as to a car into Atlanta and out to Eastpoint at $14: from Atlanta to Eastpoint, one of your factors was the local rate from Atlanta to Eastpoint?

A. Yes.

Q. Do you think you have covered the whole switching situation as far as Eastpoint is concerned by this example?

A. In Atlanta; yes.

Q. Are you aware of the fact that all industrial enterprises at Eastpoint, including the mill, the switching charge to Atlanta is one dollar a car?

A. That is true as to industrial enterprises located at that point, but it does not apply to merchants or grain dealers in Eastpoint; no, sir.

Q. It includes the mill?

A. It may include the mill, but I was speaking of the retail dealer.

Q. You did not say retail dealer.

A. I will correct that, now.

Q. With reference to the switching—going to Social Circle: If a car of grain, or any car of merchandise or other commodity was brought into Atlanta over the Atlanta & West Point or the Louisville & Nashville Railroad to a dealer on either of those lines, and he wishes in turn to ship it down to Social Circle on the Georgia road, he can do it without switching, can he not?

A. I do not recall a single complainant in this case that is located on the Louisville & Nashville terminal.

Q. But the fact is the Louisville & Nashville, the Georgia, and the Atlanta & West Point, have joint terminals at Atlanta?

A. That is true.

Q. Is that not true at Atlanta, that the roads there have no switching charges?

A. I stated there would be no switching charge on a movement loaded at a warehouse or elevator in Nashville destined to Social Circle, going through.

Q. You also said an Atlanta merchant must pay two dollars.

A. I stated that three of the complainants in the original case were located on the line of the Nashville, Chattanooga & St. Louis Railroad, and if they desired to make a shipment to Social Circle, they would be obliged to pay two dollars switching to the Nashville, Chattanooga & St. Louis to get that car to the Georgia Railroad.

Q. On which line is W. S. Duncan & Company?

A. On the Georgia Railroad.

Q. Would not cost you anything?

A. No sir.

Q. Is it not a fact that that same condition you have described is universally true in so far as switch-

ing charges are concerned, where there are not joint terminals, and the business is brought into some point local to that particular line, as you have described, and he chooses to send it out to some local station on some other line which does not have joint terminals with you, is it not universally true they must pay the switching charge?

A. Yes, but if a dealer at Macon, Georgia, located on the Central of Georgia, was delivering or selling a car to a local point not on the Central, he must pay two dollars a car the same as an Atlanta man.

Q. Say, the Southern Railway from Cincinnati?

A. That is true.

Q. You have not described anything unusual in this example.

A. I was illustrating the disadvantages that the grain dealer in Atlanta had as against the Nashville dealer.

Q. Take salt from Nashville—would it not be the same thing?

A. That is true.

Q. There is no preference given those grain people?

A. No preference; but I am illustrating the disadvantages by reason of rebilling at Nashville.

Q. The same as every other town that does not have rebilling?

A. Certainly.

Q. And the same advantages that accrue to the Nashville dealer would accrue to the shipper from Cincinnati or other Ohio River crossings?

A. Yes.

Q. No difference as to handling his shipments?

A. Right.

Q. That is the case where there is no reshipping?

A. That is true.

MR. WITHROW: That applies to local points that base on particular basing points?

A. Yes.

MR. CALLAWAY: The same as grain—no difference between the two?

A. Yes.

Mr. Moore: I would like to make this statement: That if the rate was not made seven cents from Ohio River crossings into Nashville, and the rate remained ten cents from Ohio River crossings into Nashville, Atlanta would be on a parity with Nashville, to Griffin. To Newman, Georgia, Atlanta would have one-half cent per 100 pounds in favor of the Atlanta dealer.

Mr. Wymbish: Explain that.

Mr. Needham: If the rebilling privilege were taken out?

A. Taken out, and the local applied from Cairo and other Ohio River crossings into Nashville; Atlanta would be on a parity to Griffin and Newman.

Mr. Brandeis: Suppose the local were reduced to seven cents into Nashville, would Nashville retain its present advantage over Atlanta?

A. If the rate was seven cents, it would.

Q. Would retain all the advantages it now has?

A. Yes; if possible to establish a seven-cent rate there.

Judge Mack: You mean both in the southeast territory and in the Carolinas?

A. Not into Carolina territory.

Judge Mack: Would it retain any advantage in the Carolina territory?

Mr. Moore: On seven cents?

Judge Mack: Yes.

Mr. Moore: The rate from the Ohio River—from Louisville—to Carolina territory is 35 cents. Now, the rate from Nashville is 33 cents. If they had a flat rate of seven cents, that would make a rate of 40 cents; that would be the same as Atlanta, I think, 40 cents.

Mr. Wymbish: The same as Atlanta?

A. Yes; the seven-cent flat rate into Nashville would equalize Carolina territory as between Nashville and Atlanta to those points that we have been discussing and to Greenville, South Carolina.

MR. WIMBISH: All points would take the 35-cent rate?

A. Not necessarily; because the rate is different from Atlanta to various Carolina points. It would to all points taking the—

JUDGE MACK: Sixteen-cent rate.

MR. NEEDHAM: You mean the local out—sixteen cents; that would equalize Nashville.

MR. MOORE: The rate varies from Atlanta to Carolina territory.

W. L. FAIN.

(Mr. W. L. Fain is sworn by Judge Mack.)

MR. WIMBISH: Mr. Fain, give your name to the reporter.

A. W. L. Fain.

Q. Where do you reside, Mr. Fain?

A. In Atlanta, Georgia.

Q. What is your business, Mr. Fain?

A. My business is the grain business.

Q. What is the style of your firm or corporation?

A. W. L. & W. M. Fain.

Q. How long have you been in the grain business at Atlanta?

A. I entered the grain business in 1881, thirty years ago last July.

Q. Are you also milling?

A. When I entered the business, it was a milling and grain business, principally a milling business.

Q. Where was the mill?

A. At Resaca, Georgia, on the Western & Atlantic Railroad, between Atlanta and Chattanooga.

Q. Do you still retain that milling interest?

A. I still retain the mill, but it is idle.

Q. What is your business now?

A. Principally dealer in grain.

Q. What facilities have you, or your firm, in Atlanta, for conducting the grain business?

A. If you will allow me to state in my own way, I will give a little history of my business, which will lead up to what I want to say: In 1881, my business, both in Atlanta—mind you, my warehouse and my offices have been all the time in Atlanta, but my mills were located at Resaca, Georgia—at that time we had no milling in transit so far as the Western & Atlantic Railroad was concerned. I milled at a differential of four to five cents a hundred over and above the Atlanta rate. That continued for a number of years under the former lessee of the Western & Atlantic Railroad before the end of their lease. That differential was affecting my trade to some extent. Competition from mills on the line of the Nashville & Chattanooga Railroad—with the millers and especially myself, located in Atlanta, caused an appeal to the officials for relief. They cut that rate differential from four and five cents to two and a half cents a hundred. I operated under that differential until the close of the former lease, and after the—

MR. WIMBISH: 1890?

A. That was about the year 1890. After the present lessees took possession of the Western & Atlantic Railroad, they moved the offices from Atlanta to Nashville, and the millers all along the line of the Western & Atlantic Railroad, several of them at various stations were complaining of the favor which was granted to the mills on the line of the Nashville & Chattanooga Railroad, and was not allowed to the mills on the Western & Atlantic Railroad; namely, to have the same privileges, milling in transit, in full. The millers along the line of the Western & Atlantic Railroad held a meeting in Atlanta, and invited Col. Thomas to be present and hear our complaint. He did so, and after hearing our complaint, he consented to grant us milling in transit with one proviso; that we confine our business—the movement of our grain—to the lines of the Nashville & Chattanooga Railroad; and, that would not affect anyone else except myself, because I had a business in At-

lanta which was independent of my mill at Resaca. I could divert my Atlanta grain over other routes than over the Nashville & Chattanooga Railroad, but in order to get my milling in transit, I agreed to their arrangement; and so in a sense I paid for what I got because my business outside of the milling business was growing, and the Western & Atlantic people seemed to want it and they granted me milling in transit under that agreement. Now, that continued until about two years ago, when for reasons—one of them I will state, that being tied up to the Nashville & Chattanooga Railroad, to get grain into my mill at various times I was at a great disadvantage, by my competitors who were not so tied up, being able to get their grain from other lines into their mills, but at times when we could not get our grain over the lines of the Nashville & Chattanooga Railroad.

MR. CALLAWAY: Is that agreement in writing?

A. It was not put in writing.

MR. WIMBISH: What was the result of that situation? Closed down your mill?

A. Yes; and have not operated it in two years.

MR. WIMBISH: Now, Mr. Fain, what I would like for you to state—Is Atlanta discriminated against in favor of Nashville because of rebilling, as you see it?

A. Well, in the first place, Nashville can sell merchants in Atlanta and can also compete in Atlanta's territory with Atlanta, not only on the same rates but in many cases on lower rates on account of the rebilling, and in all cases lower on account of the elevation charges, which amount to the expense of one handling of the goods.

Q. Now, Mr. Fain, suppose that you sell one car of grain, say, at Social Circle, which seems to have been given undue prominence in this case, a point basing on Atlanta, and you buy a carload lot from an Ohio River crossing, and Nashville buys from the same place at the same price, can Nashville lay down

that car of grain in Social Circle at the same transportation charges for which you can do it?

A. Yes.

Q. Does Nashville get any advantage in switching or in any other way, so as to reduce the cost of the grain?

A. Yes; in the first place an elevation charge to pay for handling.

Q. Leaving that out, purely rebilling?

A. In my case, as well as all the other Atlanta dealers, we pay, not as Mr. Moore stated, two dollars a car, but three dollars, for switching.

Q. That has been increased?

A. Yes; we have now a different arrangement.

Q. The Nashville dealer, under rebilling, can inspect the grain, sack it, and so forth. Is that a valuable right?

A. Yes; that is a very valuable privilege, and that is one of the reasons why Atlanta cannot sell from Ohio River points to points in the southeast without a great risk of having the goods arrive in bad condition, whereas if we had the privilege of stopping them in Atlanta, inspecting them, and seeing they are in proper condition, then we could do so safely, knowing the goods went through all right, and would be accepted, all right.

Q. How does that really affect the trade and your ability to trade at these points, where you have common rate points that base on Atlanta? Suppose a man at Social Circle wanted to buy a carload of grain and you can make a delivery, we will eliminate for a moment the switching, and say you could deliver in Social Circle at the same cost that Nashville could, or in any other point that bases on Atlanta; would Nashville be given the preference because of the fact they have the opportunity and right to inspect that grain and condition it before sending it on, whereas Atlanta has not the right? Explain fully if that be true.

A. I think, Colonel, you used Social Circle: It does not illustrate the point, because there we have the privilege of examining the goods if we reship from Atlanta.

Q. Suppose you bought a carload of grain at any Ohio River crossing and sell in carload lots at Social Circle or other point basing on Atlanta, do you then have the opportunity to inspect that grain and condition it at Atlanta?

A. We do not.

Q. Does Nashville?

A. Nashville does.

Q. Then, if that gives Nashville an advantage with respect to that transaction, explain what it is.

A. Well, Nashville can ship the grain, knowing the condition of the grain, and knowing what she is shipping. She has paid three-quarters of a cent per 100 pounds elevation charges, and gets it the same way. That is the principal difference so far as local points are concerned. Now, as to basing points, such as Macon, and Augusta, and Columbus, then we would have to ship, in order to get in as cheap as Nashville, we would not have in the first place, the elevation charges, we would lose that, we would have to ship the goods direct from the Ohio River points to Macon, or Augusta, or Columbus, without ever seeing them. We would have to accept the shipment at the initial point, pay the charges, and take our chances of its coming up to grade and being in good condition.

Q. Well, now, in this Georgia territory, if you had the right of inspection and treating the grain, could you deliver that grain in at least as good, if not better, condition than Nashville could, being further off, and the grain less subject to damage and injury in transit?

A. If we had rebilling—our present facilities, I will state, are not as good as those at Nashville, but if we had rebilling privileges in Atlanta, within five years we would more than double Nashville's capacity for handling grain.

Q. Why?

A. We have, in the first place, the trade there. We could get to all points in the southeast.

Q. Why is that, because you have a better distribution system of railroads?

A. That is it.

Q. Are you nearer the heart of the consuming territory?

A. Yes; and we know the people better. We are in touch with them as we sell them other lines of goods. Our dry goods and clothing merchants can go all over the territory, whereas the grain merchants cannot. Our territory, as it is now, owing to the rebilling privileges existing at Nashville, and owing to the basing points at Macon and Augusta, and Athens, is about 75 miles east of Atlanta, 60 miles south of Atlanta, 75 to 80 miles west of Atlanta, and 20 miles north of west. Now, that is the territory where we can go safely and are not in competition with Nashville, and all that territory.

Q. What is Atlanta's territory as to other lines of trade? I am not speaking of manufactures, wholesale and jobbing trade.

A. I used to be in the dry goods business—six years—wholesale dry goods business. I traveled in North Carolina, another salesman was traveling in South Carolina, and another in Southern Georgia; and part of the time I traveled in east Alabama and a portion of East Tennessee. That was our territory in the dry goods business.

Q. Under an equality of opportunity, could the Atlanta wholesale grain dealer trade in Carolina territory?

A. Yes sir.

Mr. Wimbish: Let me understand.

Mr. Fain: Under equality of opportunity, he could trade in Carolina.

Mr. Wimbish: Would it be natural?

A. Yes sir.

Q. Can they now as to grain, grain products and hay?

A. No.

Q. How many grain dealers in Atlanta engage in the business of grain, grain products and hay?

A. About ten that do an exclusively wholesale business, and there are a number, probably as many more, that do a smaller business.

Q. What is the amount of capital invested in that business?

A. About a million dollars at present.

Q. How much grain is handled in Atlanta, comes in and goes out, or comes in and is consumed, or goes out, the aggregate?

A. Some time ago, an estimate was made on that point, I believe—of course I cannot give you the exact figures—but from the estimates made at that time, I believe it was stated to be 12,000 cars per annum.

Q. What does that mean annually in dollars and cents?

A. Taking grain, grain products and hay, I suppose it would be about equally divided between the three items, estimating the value to be about $500 a car.

Q. That is, really, about six million dollars?

A. Six million dollars.

Q. Does that include all that Nashville sends into Atlanta?

A. Yes sir.

Q. Do you know what proportion Nashville does send into Atlanta? I mean of those goods sold to other than wholesale dealers in Atlanta.

A. Well, I do not know how much they sell, but I know Nashville cuts me out of a good deal of my own trade.

Q. Suppose you wanted to sell a carload of flour, or grain, to stockyards, or any large consumer in Atlanta, and suppose that that consumer was located on a line of railway where he could get cars, say, from Nashville, could you, from your warehouse, sell and

deliver that carload of grain to that consumer at any less price than Nashville could?

A. Could sell at the same price I would pay in the first place. If I sold at the same nominal price it would cost me three dollars to track from my siding on the Western & Atlantic Railroad to another siding on the Western & Atlantic Railroad that is the cheapest we pay.

Q. If you did such a business and desired to sell, say, a sack of flour to a family in Atlanta, could you sell that any cheaper than Nashville delivered at the house in Atlanta I mean, so far as freight charges are concerned?

A. I could not.

Q. Would it cost you as much per hundred pounds to lay down a carload of grain, grain products, or hay, as it would cost the Nashville dealer per hundred pounds to deliver one sack of grain or flour to a small consumer in Atlanta?

A. The same rate, except minimum charge of 25 cents, no shipment accepted less than that.

Q. Now, Mr. Fain, what facilities now exist in Atlanta for conducting this business, the number of elevators, warehouses, and the facilities for handling the business?

A. I will state that up to three years ago, or perhaps two years ago, the facilities for handling grain at Atlanta for a number of years—now, there was a time when we had an elevator there some twenty years ago but it was starved to death by the railroads.

Q. A public elevator, that the railroads patronized?

A. Yes; but owing to competition between the roads it could not get business and was sold and torn down fifteen or twenty years ago, but from that time up to about two years ago we had meager facilities for handling grain. At that time I had a comparatively small warehouse. Two years ago, I bought me

a very large lot on the Western & Atlantic Railroad and erected, as I considered, a very fine warehouse, and built me an elevator, consisting of six bins, and all the necessary facilities for handling and sacking grain. Besides what I have, there J. D. Frazier & Company, who have a similar warehouse and a similar arrangement for sacking grain—

Q. An elevator?

A. An elevator not quite as large as mine. So has Duncan & Company and the Grain Company, and the Atlanta Milling Company has its own elevator conveniences. At this time with the present facilities for handling grain we can save if grain comes into Atlanta in a heated or moist condition, we have sufficient facilities now for taking care of all the grain we can handle for our own trade. I can store in my warehouse 250 carloads of grain in packages.

Q. Is there any necessity for shipping damaged grain back to Nashville for treating or conditioning?

A. Not at this time. Some three or four years ago there was an unusually warm spell in March and there was a large number of cars of corn shipped that were blocked in Atlanta and there were no facilities for handling or curing all of it; some of it there was, and some of that grain I knew to be sold to merchants in Nashville and shipped back there.

Q. For what purpose?

A. It had been out and was sent back to be used in stock mills.

Q. Suppose you get a carload of corn in Atlanta and it was damaged and heated, have you the right and the privilege of taking that corn out and treating it—I mean, if destined to beyond Atlanta? Suppose you have sold car of grain in Griffin or anywhere else, and that car comes back to Atlanta, and you observe it needs treatment, can you inspect and treat it?

A. No; unless I pay for it.

Q. Have you the right, without paying local charges, and so forth?

A. No sir.

Q. If you had that, could you treat it as well at Atlanta as at Nashville?

A. Might not be able to do it, to do just as well.

Q. I mean if the facilities are there or would be there.

A. If we had rebilling and were on a parity with Nashville and had the same privileges and rights that Nashville has had, I think I can safely say that within five years' time we would have five million dollars invested in handling grain.

Q. Why?

A. Because there is capital there waiting for an opportunity to be utilized in that way. I happen to be in a position to know something about the banking arrangements in Atlanta. I am connected in a way with four or five banks and I am trustee of one of them, and the last annual statement made there showed that there is money waiting in Atlanta now for investments, and, as a business man, I was asked what could be done in our line.

Q. You have sufficient available capital then to supply all the needed facilities?

A. Yes.

Q. How is Atlanta situated climatically?

A. It has an elevation of 1050 feet above the sea. The Union Station of the Nashville & Chattanooga Railroad is 1050 feet above the sea level.

Q. How is the quality of air as to dryness and salubrity as compared with Nashville adapted to the drying and curing and preserving of grain?

A. We have no fogs there like Nashville in the first place. We have a dry atmosphere because of the sweep of the winds not even mountains to protect us much from the winds.

Q. Does that afford a natural point for the stoppage and preservation of grain?

A. I should think so. Even the cars that come

there would have a dry atmosphere, and unless pouring down rain, would have a dryer atmosphere than Nashville. I would like to state one other fact on this point that you asked. When I began the grain business in 1881 previous to that, when I first went to Atlanta in 1870, the population, in round numbers, was 21,000—something over 21,000, in 1871; in other words in 1880, it was 36,000 and something over that was the time when I began my business the grain business; in 1890, it was 65,000 and something over; in 1900, it was 89,000, and in 1910, it was 154,000. Now the population has increased in the last 30 years more than four fold. The business in Atlanta, outside the grain business, has increased in most all other lines in the same proportion. The manufacturing of various lines, wholesale dry goods, grocery houses, lumber plants, and so forth, and all other lines that are not restricted in any way, have increased in about the same proportion. Our banking capital—when I began we had, I believe, four banks in Atlanta with a capital of less than one million of dollars. Today, we have some dozen very large, strong banks with one-half million to one million and a half capital each and a number of small ones. I presume we have between twenty and thirty millions of dollars in our banking capital.

Q. In other words, your business in Atlanta has not increased, in anything like the proportion of increase—

A. Not in my line. Atlanta's capacity has increased at least four fold in the last thirty years for general business, but the grain business is restricted to what it was twenty or thirty years ago. We have not, really, owing to the fact that Nashville has come into our territory—we have not really the territory we had thirty years ago.

Q. Does Nashville come in and solicit your retail trade?

A. They do.

Q. Suppose you take a situation of this kind:

When you have bought grain and have it in Atlanta in larger quantities than your ordinary regular trade demands; in other words, you have a congestion of grain on hand—does that occur in your business?

A. Yes sir.

Q. Now, as under present conditions, have you not the privilege or opportunity of sending that grain out to other markets, like Augusta, Macon, and so forth, and getting rid of the grain and relieving that congestion as compared with Nashville?

A. We have not, owing to the difference in rate, the local rate as against the through rate.

Q. If you had rebilling, could you relieve that congestion?

A. Yes sir.

Q. Could you equalize the markets in that way, supply one market with the excess?

A. Yes sir.

Q. Would that be productive of competition among dealers and markets, if you could go into Augusta, for instance?

A. Yes.

Q. Would that be a benefit to the consumer?

A. Well, I think it would, yes. It would give one additional market nearer home. I would like to state one other point on the same line: If we had rebilling privileges, in one particular, I think it would be a benefit to the railroads as well as the dealer. Often, we have more grain coming into Atlanta than they have immediate use for, and sometimes it comes in tough and damp; sometimes it comes in a leaky car and becomes moist. If it is bought for good grain, of course the dealers have the right to reject it no matter whether the damage originated at the point of shipment or whether it became damp en route; we have a right to reject it. Now, then, if we had rebilling, in many cases, we could adjust that difference with the shipper, take the grain, cure it, and forward it when it was ready to forward. As it is now, the grain is rejected and

thrown on the hands of the railroad, in many cases the railroad standing damages because of leaks in cars, because of their own fault, and they pay all the damage, whereas, if we had the privilege of taking that grain into our warehouses and curing it and the privilege, afterwards, of forwarding it on a through rate, we would save the railroads part of their losses.

MR. WYMBISH: I will ask you one other question, Mr. Fain. Would it be a benefit to the public and to the consumers and to the markets to have storage depots, points in consuming markets, where a supply of grain could be accumulated,—grain, grain products, and hay—so as to meet the immediate demand of nearby consumption? If you and other dealers in Atlanta had a large stock of grain products on hand to meet the requirements of the market as they arise, would that be a public benefit?

A. Yes sir; and I will illustrate it: During the Spanish-American war, I furnished the Government with a large amount of forage under contract. At one time I was on a visit, away from home, and I received a telegram from the Quartermaster's Department to know if I could supply at once 750,000 pounds of a certain article, shipment within ten days. I immediately returned home. I canvassed the whole town and could not find that much in Atlanta, and had to decline, and the Government went to St. Louis for the goods.

Q. If you had had rebilling could you have done that?

A. Yes. The Government suffered delay on account of Atlanta's not being able to supply the demand.

MR. CALLAWAY: Do I understand, Mr. Fain, that you think that Columbus, Macon, Cordele, Albany, Valdosta, Montezuma, Dublin, Rome, and those Georgia points should each have extended to them the same reshipping privileges as Atlanta wants?

A. I have not said anything of the kind.

Q. You do not think so?

A. I have not stated anything of the kind. I am speaking—

JUDGE MACK: But he is asking you.

Q. You described the salubrity of the Atlanta climate and gave us its elevation as 1050 feet, how nicely situated to take care of and conditioning the grain, and so forth. Do you think, also, the reshipping privilege, in the same manner as it should be given to Atlanta, should be extended to Columbus and those towns I have mentioned, especially Albany and Valdosta?

A. I have thought some of those towns would be entitled to it if Atlanta had it.

Q. Take Valdosta, now, about twenty miles north of Florida.

A. I do not think she would have much use for it.

Q. How about Cordele?

A. Same thing about Cordele.

Q. Now, take those towns I have mentioned and all the other towns in the complaint; under the present rate adjustment in the south they are basing points; I believe you referred to them.

A. I do not know whether Valdosta is or not.

Q. Assume that it is: Under the present rate adjustment, Atlanta, regardless of Nashville, cannot come into the territory basing on those other nine basing points as largely, of course, as the cities which are the basing points of the center of the distribution area, can it?

A. That is true.

Q. If you could reship at Atlanta, it being one of the first points in the state of Georgia reached on the forward movement, then of course under the reshipping practice you could reach all the points in the district now applicable you might say to each one of these basing points; could you not, at the same rates and terms as the particular basing point or distribution center can now reach its own local points?

MR. FAIN: If we had rebilling?

MR. CALLAWAY: Yes.

A. Yes.

Q. Could you go into every town that Macon is now basing point for on the same terms as Macon?

A. Yes.

Q. You cannot do it now?

A. No.

Q. Reverting to your mill at Resaca—that is a local station on the line of the Western & Atlantic Railroad?

A. Yes sir.

Q. I understood you to say that when that was a State road—when it was leased—prior to the time the Nashville & Chattanooga road took it over, that you were paying a differential or arbitrary of five cents.

A. About four to five cents.

Q. And that at some conference at which you and all the other millers on the line of the Western & Atlantic were present, Mr. Thomas agreed to put all of you on a milling in transit basis?

A. Later on; under the present management—the older Thomas is dead.

Q. The Nashville & Chattanooga put you on an even basis?

A. Yes sir.

Q. Now, when you were put on that milling in transit basis, you could buy grain and ship it into your mill and grind it into flour and ship it out on a through rate from the point of origin?

A. Yes.

Q. In what way has the Nashville & Chattanooga put you out of business?

A. That is not in this case.

Q. Did you not intend the court to understand that through some agreement with Mr. Thomas, not in writing, you had been forced, in living up to same, to go out of business at Resaca—your milling business?

A. Yes; I did not say my business at Atlanta, or grain business. I could not operate my mill as favorably on the arrangement I had as if unrestricted, if the railroads had brought in grain over other lines to my road.

Q. In what different position were you then from any other miller on the railroad?

A. The difference is this: Those located at stations on the railroad did no other business except milling, and I was doing a grain business and I got my grain from other points. Under the arrangements that all the grain and hay that I bought came direct to Atlanta instead of Resaca, I would favor the Nashville & Chattanooga Railroad.

Q. Then you wanted something else?

A. The privilege of bringing it in on other lines. I had other lines going to Chattanooga.

Q. But not being able to ship grain into Resaca over any other lines than the Nashville & Chattanooga, you had to close up your mill at Resaca?

A. One other reason.

Q. Is it not true you could get grain at the same price on the same freight rate at any of the Ohio River crossings that the Nashville & Chattanooga reached as well as at Nashville, also from St. Louis, and any of those points like that?

A. Not true. True about the rate, but the price is different. Sometimes I got it at Memphis cheaper than at Louisville.

Q. At what point did the Nashville & Chattanooga fail to reach where you could get grain cheaper?

A. Alabama Great Southern Railroad.

Q. What points?

A. Points that were reached by that road.

Q. From what points?

A. Points in Nebraska, Kansas, and so forth.

Q. Did not the Nashville & Chattanooga bring it on the same rate?

A. Not always.

Q. Were not the tariffs, and is it not a fact that the rates from Nebraska are the same as over the Nashville & Chattanooga to Resaca?

A. No sir. Our rates to Resaca were made by the Nashville & Chattanooga Railroad alone, and not by any other railroad.

Q. But on grain for milling in transit to be used in your mill, you could not get from points in the west the same rate to let you mill at Resaca and send on as from what other points?

A. I will tell you since I have thought about it. When I first operated my mill and before I made the arrangements with the Nashville & Chattanooga to get milling in transit, I bought a great deal of my grain products to get to my mill from and east of Knoxville and Chattanooga—even Bridgeport—had grain shipped from Bridgeport to Chattanooga, and then carried to my mill; all along the Tennessee River. Now, then, at that time, I had as favorable rates from east Tennessee as from Nashville over the Tennessee River.

Q. But no milling in transit?

A. Had a rate in and a rate out.

Q. No milling in transit?

A. No; before the Nashville & Chattanooga gave us that; after that I was bottled up so far as east Tennessee was concerned and Resaca was concerned. I could not get my goods in from east Tennessee, or my grain.

Q. Can you name any point except those local stations—Bridgeport and local stations, at a time when the Nashville & Chattanooga leased the Western & Atlantic, the time when you did not have milling in transit; can you name a point, any point, where you could not get your grain hauled to Resaca, under milling in transit, as low by the N. C. & St. L. as by any other route?

A. Yes; points in Alabama reached by the Alabama Great Southern Railroad and the road from Hendersonville.

Q. Name the points.

MR. WIMBISH: This is not necessary, your Honor.

JUDGE MACK: They have a right to test the accuracy of his statements.

A. I cannot recall the exact incident of some years ago.

MR. CALLAWAY: I think you will admit, Mr. Wimbish, under milling in transit, he could get the grain.

MR. WIMBISH: I do not think milling in transit has anything to do with it.

MR. CALLAWAY: We have been accused of shutting up a mill. We will leave that so we can finish. Passing on, you said that you could not condition grain that was going to Social Circle.

A. No sir; I remarked that was not a proper point for illustration. We could stop it there, and ship it out at the same rate.

Q. One other thing: Did I understand you to want the court to understand that the carriers had now raised your switching charge to three dollars at Atlanta on grain going to Social Circle, or other points?

A. Out of my warehouse; that is true.

Q. Is it not a fact that the tariff simply applies from point to point in and about Atlanta, but that the switching charge from anywhere on the Western & Atlantic to any point on the Georgia or other railroad, rail transportation, is still two dollars?

A. That is exactly what it would be shipped from my warehouse to Social Circle—there would be a charge of three dollars because it passes from one railroad to another—it would be really four dollars.

Q. We will put the tariffs in the record, because as a matter of fact, it is two dollars.

A. Some few months ago, we had the matter up before our Georgia State Railroad Commission. I was present when the rule was promulgated by the Georgia Commission, and I know it is true, it is three dollars if I move a car. If I switch from my warehouse to Duncan & Company, it is four dollars.

Q. How to Social Circle?

A. That goes on the Georgia Railroad.

Q. That is two dollars?

A. You are right about that.

MR. CALLAWAY: Now, you spoke of the fact that while years ago you could reach everywhere, on grain as well as on dry goods and things of that sort—

A. No sir; I never stated that. I stated we could reach out further than we do now. In other words, I would like to state one further fact. Some twenty to twenty-five years ago, when I was running my mill at Resaca, Georgia, I had a salesman who lived at Griffin, Georgia. He visited home every Saturday night, spent Monday at Griffin, and the afternoon at Newman. He very seldom failed to sell from one to two carloads of goods—very good for Griffin, and surely one car at Newman. That was when Atlanta could get into those points—on account of the rates.

Q. Was the Nashville, Chattanooga & St. Louis responsible for that change?

A. Partly so. Now, today, I do not sell a dollar's worth because of advances in freight.

Q. Is it not true those changes have come about there and at such points as Cordele, Valdosta, and all that class of towns in Georgia, because all of those Georgia cities—Griffin and all of these others—have been taken out of the combination basis, and have differentials, and the rates from through points of origin have been lowered?

A. Those points you name are not in the same category as Griffin and Newman; they are forty miles from Atlanta.

Q. Have not those two towns competitive rates?

A. That is what we complain about—Nashville can get in and we can not.

Q. Can not every other point on the Ohio River get in?

JUDGE MACK: Let me ask: If this rebilling is taken away from Nashville and thrown back on the

Ohio River points, would they not then appeal to the small trade?

A. Their appeal would fall on deaf ears. It would take longer in fact for small shipments to arrive; and, that is one of the reasons why they buy from Nashville in preference to these other points, because nearby.

MR. NEEDHAM: Is it a fact that from the river crossings there are any rebilled shipments of any amount, or, is it the wholesale trade, by carload lots?

A. Principally wholesale, and very little less than carload shipments into Atlanta.

Q. How with reference to southeast territory?

A. I think it is practically the same all over the southeast territory; very little less than carload shipments from Ohio River points into Atlanta or Atlanta territory.

MR. BRANDEIS: Mr. Fain, referring to this disadvantage about milling in transit, and the disadvantage about inspection, and those other things you have spoken about of Atlanta as compared with Nashville: They would pay the same if the rate from the Ohio River to Nashville were reduced from 10 cents to seven cents, after the taking out of the rebilling privilege at Nashville, would they not? Nashville would still retain the same advantage if the reshipping privilege were withdrawn from it, and the rate to Nashville reduced to seven cents and it shipped out on a local rate from Nashville to the southeast points?

A. Oh, I suppose it would.

Q. Would not Nashville retain the same advantage over Atlanta?

A. In some respects she would.

Q. Would she not on inspection?

A. Under those circumstances, as I understand the question and the situation as it would be, Nashville would be a breaking point just like Atlanta is now between through and local rates. We can ship to these small stations and examine the grain, but not on through rates.

Q. But if Nashville got, there, the equivalent of the 24-cent through rate, down there, by a reduction of the local rate into Nashville to seven cents, then she would both have the advantages of inspection and the other things you have mentioned and also be able to reach these same places at the same rate at which she now reaches them, and have the inspection and like privileges over Atlanta now as then, would she not?

A. I think that is true.

MR. McCONNICO: Mr. Fain, at what time was it that you constructed this new elevator of yours?

A. In 1909.

Q. How long have you been in the grain business at Atlanta?

A. Thirty years last July.

Q. Is your elevator in Atlanta?

A. Yes, sir; that is, my elevator; my mill is at Resaca, and also at Atlanta.

Q. And two years ago you made this new investment in an elevator at Atlanta, after knowing the grain business down there for thirty years; is that correct, or not?

A. Yes; and with the hope of getting relief from the Commission.

Q. You invested your money on the uncertain hope, then, of getting relief?

A. I invested my money with a hope—not entirely with that hope—I was already in the business, and I invested in it.

Q. How much of an investment was it?

A. I spent $75,000 in the building, and about $25,000; one hundred thousand dollars invested in my plant.

Q. Well, now, you said that there was other capital lying down there loose in Atlanta to be invested, and, with respect to some of it, you were occupying the capacity of trusteeship, or were in an advisory attitude?

A. I said I was a trustee of one of the banks.

Q. You told Mr. Wimbish there was more capital there to be invested?

A. In anything that will pay.

Q. I understand, Mr. Fain, that you said to Mr. Wimbish, that Atlanta is under a disadvantage with Nashville—some disadvantage with respect to reaching any point—is that your statement?

A. Yes sir.

Q. She is under some disadvantage even with refence to reaching local stations out from Atlanta that base on Atlanta?

A. Yes.

Q. And she is under a still more marked disadvantage with respect to reaching any points that have competitive through rates from the Ohio River?

A. What do you mean by that?

Q. You say, as I understand you, that Atlanta is at a disadvantage under Nashville with respect to reaching all points in Atlanta's territory that base on Atlanta?

A. That is true.

Q. And you also say that Atlanta is under still more disadvantage—that Atlanta is at a still greater disadvantage under Nashville with respect to all points like Griffin?

A. Yes.

Q. Then Atlanta, from your statement, is under a disadvantage compared with Nashville in selling all points?

A. That is true to a certain extent.

Q. Yes, sir; will you tell me if that is so how it has resulted that Atlanta in the territory adjacent to Atlanta has shipped sixty per cent—seventy-five per cent—of all the business that has been shipped to those points; and when you get through with that, please answer why it was that you would put this investment in that business that was at that disadvantage in reaching every point?

A. One of the reasons is—you mean if we had the same privilege?

JUDGE MACK: No; as things are now.

MR. MCCONNICO: Why did you make the investment?

A. Because I needed the appliances to handle the business that I supposed I would get if we got what we were asking for.

Q. There was no existing demand. You were in the grain business thirty years, and made your investment for the purpose of handling the business you might get?

A. One of the causes for making this investment was for the purpose of handling bulk grain. We did not have this. Three years ago, Atlanta could not handle bulk grain in a bad condition. One investment was to prepare myself to handle the grain we now get.

JUDGE MACK: How do you get it now without the rebilling privilege?

A. For our own business; we now conduct a local business.

JUDGE MACK: You are using that elevator, are you, up to full capacity?

A. Yes; but not to full capacity.

MR. MCCONNICO: I understand, Mr. Fain, you have described to Mr. Wimbish the advantages of Atlanta, and have undertaken to give the reasons why you think Atlanta ought to have this reshipping privilege—that was your proposition, was it not?

A. Yes.

Q. On your own statement, is not Atlanta, from the standpoint of deserving this transit privilege, in likewise a better condition to have it than any of the Ohio River gateways, in so far as supplying southeast consuming territory is concerned?

A. Well, I think it would be on an equality.

Q. Would you not, for the same reasons, you have given Mr. Wimbish, that in your judgment are sufficiently strong to permit you to say to him, if you had reshipping you would have five million dollars invested there, it is so well located as a distributing market for grain; for all of those reasons, are you

not better situated, in your judgment, to be a distributing market for grain in the southeast territory than any of the Ohio River crossings?

A. I believe that is true.

Q. And so, if perchance, the Commission's order in this case should be obeyed by taking out the rebilling privilege at Nashville and not by giving it to Atlanta and the other complaining Georgia points, that, in your judgment, would work a discrimination against both Nashville and Atlanta in favor of the Ohio River crossing points, would it not? Does that not necessarily result from your statement?

A. I think so. In other words, it would throw the business largely into their hands.

Q. You told the court that you thought Atlanta, for the same reason, that it is better situated than Nashville to be a distributing point, for the same reasons it is better situated than the Ohio River crossing points.

A. I think it is.

Q. Then giving these concentration and transit privileges at the Ohio River crossing points and not giving them to Atlanta is an unjust discrimination against Atlanta, is it not, sir, according to your position and views, I mean, of course? Can you give the court any reason why the Ohio River crossing points should have the privilege and Nashville not have it?

A. Well, I will not argue that point. I think Atlanta deserves it as much as Nashville.

Q. And you say Atlanta deserves it more than the Ohio River crossings?

A. I think she would be a better distributing point for the southeast than either Nashville or the Ohio River points.

JUDGE MACK: Atlanta would?

A. Yes, sir.

Q. Is not Atlanta 289 miles further from the source of supply of this surplus grain than Nashville?

A. That is true, but Atlanta has two ways of con-

veying grain to Atlanta without going through Nashville. We can go by Memphis or Cincinnati and not touch Nashville.

Q. But Nashville has about five ways that grain will come to it, coming through these several Ohio River crossing points, has it not? I mean to say, as regards hauling of grain from Cairo, Paducah, Hickman, Evansville, and so forth. Do not rail lines radiate like spokes down towards Nashville as a hub, coming from all those Ohio River crossing points?

MR. FAIN: All come to Atlanta.

MR. MCCONNICO: And do they not get to Nashville, though, 289 miles before they come to Atlanta?

A. Not all of them: Memphis does not.

JUDGE MACK: The maps will show all you have been asking about.

MR. MCCONNICO: Now, I am going to ask you again, Mr. Fain. You expressed an opinion, and as a business expert, on this subject, to your counsel.

JUDGE MACK: Just ask the question.

Q. I am going to ask you to give, if you please, one reason why any Ohio River crossing point should have this reshipping privilege and Nashville not have it, or from your view point, Atlanta not have it.

A. My main reason is that Atlanta is discriminated against by giving this privilege to Nashville and refusing it to Atlanta.

Q. And if this reshipping were withdrawn at Nashville and left in force at the Ohio River, in your view that would be equally a discrimination in favor of the Ohio River crossing points against both Nashville and Atlanta?

A. Atlanta would not complain of that as much as of Nashville because they do not invade our territory at a disadvantage to our business.

Q. I do not know what the individual merchants may do at the Ohio River. They could if they wanted to, could they not?

A. In a way, but not so successfully as Nashville, because of the distance further beyond. A dealer that buys in small quantities wants to get his goods

delivered as quickly as possible. Less than car-load shipment of course takes longer time to go from Nashville, I will say to Social Circle, than from Atlanta to Social Circle. It would take a still longer time from the Ohio River points to Social Circle.

Q. You now reach Social Circle on the same basis that Nashville does, don't you? Is that true?

A. So far as the rate is concerned, but I am not paid for the handling of my grain, as Nashville is paid the three-quarters c. elevation charges.

Q. I am not talking about quantity business, but small business from Atlanta to Social Circle. You do that at the same local rate?

A. Same freight rate paid by me; not paid for handling my grain.

Q. That is the elevation allowance feature you are talking about?

A. Yes.

Q. Leave that out and restrict your answer to this rebilling. You are on a par, so far as handling this less than car-load rebilled business from Atlanta to Social Circle is concerned?

A. With one exception; Nashville can sell Social Circle, and stations on the same railroad, and let them pay at their warehouse. They will transfer them to these points at no charge from Nashville, whereas if I do this, I will pay two dollars for switching the cars.

JUDGE MACK: That is car-load?

A. No; broken lots. Nashville can ship ten sacks into our territory at the same rate as a car-load; that is one reason why we complain of Nashville.

JUDGE MACK: Will that not apply to salt, or anything not under transit?

A. I do not know about salt.

Q. Anything not under transit?

A. No; it does not on hay.

MR. MCCONNICO: That is because the rate on hay is not the same for car-load and less than car-load?

A. That is true.

Q. But does that not apply to anything else not on an any-quantity rate?

A. I presume it does; I do not know that it does. I only know in my own line of business; am not in the dry goods or shoe business and do not know what they pay or do, or what Nashville does. I cannot answer for any other line but my own.

Q. If the practice was stricken down at Nashville, and not extended to Atlanta and the complaining Georgia points, does it follow the Ohio crossing points would have it in their power, and merchants at those river crossings would have it in their power, to reach over into Atlanta's territory, exactly as Nashville now does?

A. They would have it in their power; yes sir.

Q. And that being so, does not your alleged discrimination reduce itself to a criticism of the enterprise of the Nashville merchants?

JUDGE MACK: Is not that argument? You have the facts.

MR. BRANDEIS: In this interval, I want to offer for Mr. Compton the illustrative case which he was to provide, from Paducah to Macon.

JUDGE MACK: Is that all the witnesses?

MR. NEEDHAM: That is all the witnesses. I will offer some documentary proof. (Reads titles of documents.)

JUDGE MACK: You may offer them all.

MR. BRANDEIS: About the case itself, may it please the Court. I wish to make this suggestion, if I may at this stage. I have certain engagements in January here in Washington, beginning with the eighth. The state rate cases, for example, before the Supreme Court, and will take me ten days. I would like to have this case set as late in January as possible, or in February, preferably.

(Reporter's Note: Mr. Needham later dictated to reporter titles of documents he offered at this point. These are as follows:)

The Interstate Commerce Commission, respondent, offers the following documents to be filed as exhibits and evidence in the case:

(a) Circular of the Nashville, Chattanooga & St. Louis Railway, No. 3641-A, I. C. C. No. 1930-A; Rules and regulations governing the allowance of transit privileges to grain, grain products, hay and straw, at Paducah, Kentucky.

(b) Illinois Central Railroad Company, freight tariff applying on grain, car-loads, cleaned, clipped, etc., at Cairo, Illinois, and reshipped, etc., issued December 29, 1910, effective February 1, 1911; and W. & M. V. R. R. Co. tariff No. 3455-G, Indianapolis Southern Railroad Company, 1308-B, I. C. C. No. 8016-A.

(c) Mobile and Ohio Railroad Company, no connection with participating carriers freight tariff No. 5526, and supplement No. 7, I. C. C. No. A-756, applying on grain, grain products, in car-loads from Cairo.

(d) Circular of the Nashville, Chattanooga & St. Louis Railway No. 3738-A, I. C. C. No. 1952-A, Rules and regulations governing the allowance of transit privileges to grain, grain and hay products, at Nashville, Tennessee, effective July 18, 1911.

(e) Extracts from S. E. Tariff No. 7, I. C. C. No. 78.

(f) Certified copy of the first rebilling privileges at Nashville by the Louisville and Nashville Railroad Company and the Nashville, Chattanooga and St. Louis Railroad Company, together with through rates from Ohio River crossings, i.e., Cairo, Illinois, Evansville, Indiana, Louisville and Paducah, etc., to points named, via Nashville, together with the local rates to and from Nashville.

(g) Certified statement showing the comparison of the through public rates on grain, car-loads (allowed milling in transit privileges at Nashville, Tennessee), and the through combination of local rates based on Nashville, Tennessee, applicable on

the same commodity from the Ohio River crossings (designated) of certain S. E. points (named) and showing the refunds at Nashville under the rebilling privilege.

(Reporter's Note: The following memorandum was sent to the clerk of the Commerce Court, under date of December 2, 1911, with the request that the reporter put same into the record.)

IN THE UNITED STATES COMMERCE COURT

IN EQUITY NO. 47.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
and
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Petitioners.

vs.

UNITED STATES OF AMERICA,
Respondent.
and INTERSTATE COMMERCE COMMISSION and
W. S. DUNCAN & COMPANY,
Intervening Respondents.

At the taking of testimony herein, request having been made by Counsel for the Government and the other Respondents, Counsel for the petitioner, Louisville & Nashville Railroad Company, agreed to furnish as a matter of record information which is now furnished as follows, viz:

A. The Louisville & Nashville Railroad Company undertook the operation of the Edgefield & Kentucky Railroad, being the Tennessee Division of the Evansville, Henderson & Nashville Railroad, extending from Edgefield Junction, Tennessee, to Guthrie, Kentucky, 37 miles, under a license bearing date of

July 25th, 1879. Said property was conveyed to the Louisville & Nashville Railroad Company absolutely by deed bearing date of December 6th, 1879, and it has owned and operated the railroad since that date.

B. The Kentucky Division of the Evansville, Henderson and Nashville Railroad, extending from Henderson to Guthrie, Kentucky, 97.76 miles, together with the Providence Branch, 16.10 miles, was sold under decree of foreclosure rendered June 7th, 1879, and sale confirmed November 21st, 1879. The Louisville & Nashville Railroad Company became the purchaser and began to operate the road August 1st, 1879, and under deed dated December 1st, 1879, it became the owner of said property and has owned and operated same since said date.

C. The Louisville & Nashville Railroad Company became the owner on January 20th, 1880, by purchase, of the majority of the capital stock of the Nashville, Chattanooga & St. Louis Railway. It owns $7,177,600.00 of the capital stock out of an entire issue of $10,000,000.00.

(Signed) ALBERT S. BRANDEIS,
Counsel for Petitioner, Louisville & Nashville Railroad Company.

The following letter was filed in the Clerk's Office February 16, 1912.

C—10

FEBRUARY 7TH, 1912.

NOS. 46 AND 47.

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.,

vs.

UNITED STATES OF AMERICA,

UNITED STATES COMMERCE COURT.

HON. JULIAN W. MACK,
Judge United States Commerce Court,
Washington, D. C.

DEAR SIR:

We beg to submit for your consideration, a letter from Mr. Charles Barham, General Freight Agent of the Nashville, Chattanooga & St. Louis Railway, in which he sets out that his testimony in the above case should be corrected in one particular. We ask, therefore, on behalf of Mr. Barham that his letter may be filed as a part of the record in the case, and that such reference may be made to it in the briefs and argument as may be required to correctly set forth the facts.

We are sending Counsel in the case a copy of this letter to you, together with a copy of the letter from Mr. Barham.

Very respectfully,

R. WALTON MOORE,
Special Counsel.

Copy to—

DR. CHARLES W. NEEDHAM,
HON. BLACKBURN ESTERLINE,
MR. WILLIAM A. WIMBISH,
MR. K. T. MCCONNICO,
MR. ALBERT S. BRANDEIS,
MR. CHAS. BARHAM.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.
Freight Department.

NASHVILLE, TENN., 5TH FEBRUARY, 1912.

In replying, please refer to 37802—B.

MR. R. WALTON MOORE,
Special Counsel, Colorado Building,
Washington, D. C.

DEAR SIR:

Upon reading the testimony which I offered before Judge Mack of the Commerce Court in the so-called Duncan case I find that a correction is needed.

In my evidence I said that the equalization at Nashville as compared with the Ohio River on grain re-shipped from Nashville to Chattanooga was at one time three cents, being later made five cents. This was in error. Knowing that the rate from Nashville to Chattanooga had been advanced on August 1, 1908, I was under the impression that the differential Nashville as compared with the Ohio River had then changed. To confirm this impression I telegraphed my office at Nashville for detailed information. My message was misunderstood and the reply received caused me to say that the rate having been advanced Nashville to Chattanooga from fourteen to sixteen, the equalization or shrinkage had been changed from three to five cents. As a matter of fact, the shrinkage remained unchanged despite the advance.

In the beginning, when related rates were made from Nashville to Chattanooga as compared with the Ohio River, the general basis finally agreed upon made Nashville seven cents under Louisville; the rate from Nashville, however, to be not less than the same rate per ton per mile as from Louisville, but the N. C. & St. L. did not feel it necessary to apply the full basis to a point only 151 miles south of Nashville—in other words, to protect the rates from its local points to Chattanooga, or, differently stated,

that the rate from Nashville might not be less to Chattanooga than from local stations south of Nashville, the differential was fixed at five cents. In 1908 the rate from Louisville to Chattanooga was advanced two cents and following this the rate was likewise advanced two cents from Nashville to Chattanooga, the old differential of five cents remaining, therefore, unchanged. But now the basis, or, as I have described it, crystallized adjustment, could, without objections from other lines, be changed by this company, making the rate Nashville to Chattanooga fourteen cents, or seven cents under the Ohio River, which would be two cents less than the present rate. Should this be done there would, of course, disappear the variation in the shrinkage and the added shrinkage of two cents represents only an adjustment from Nashville designed to protect our local intermediate territory.

I trust this correction will be permitted, as I am anxious my testimony shall not, through inadvertance, be erroneous to the extent mentioned.

Yours truly,

(Signed) C. BARHAM,

General Freight Agent.

United States Commerce Court

No. 46

THE NASHVILLE GRAIN EXCHANGE AND
THE NASHVILLE BOARD OF TRADE,
Petitioners,

vs.

UNITED STATES OF AMERICA, *Respondent,*
INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.

No. 47

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Petitioners,

vs.

UNITED STATES OF AMERICA, *Respondent,*
INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.

EXHIBIT

Transcript of Record before Interstate Commerce Commission

(Illustrative of Photographs)

PRINTED UNDER THE DIRECTION OF THE CLERK.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

1

47.

United States Commerce Court.

Filed Oct. 18, 1911. G. F. Snyder, Clerk.

Interstate Commerce Commission, Washington.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the original transcript of the stenographer's notes of the testimony taken before said Commission on December 3, 4, and 5, 1908, and September 27 and 28, 1910, at Washington, D. C., in the case of W. S. Duncan and others against the Nashville, Chattanooga & St. Louis Railway and others, Docket No. 1698, and exhibits introduced at said hearings which constitute all of the evidence taken before the Commission in said case, the originals of which are now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission this 22d day of August, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS,
Chairman.

2

Stenographer's Minutes.

Before the Interstate Commerce Commission.

Docket No. 1698.

W. S. DUNCAN et al.
vs.
NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY et al.

At Washington, D. C., December 3, 4, 5, 1908.

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5 Before the Interstate Commerce Commission.

No. 1698.

W. S. DUNCAN et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

WASHINGTON, D. C., *December* 3, 1908—10 o'clock a. m.

The above-entitled cause came on to be heard before Special Examiner Charles D. Drayton.

Appearances:

Mr. W. A. Wimbish and Mr. Edgar Watkins, for the complainants.

Mr. F. S. Andrews, for the Nashville, Chattanooga & St. Louis Railway, the Atlantic Coast Line Railroad Company, the Cincinnati, New Orleans & Texas Railway Company, the Alabama Great Southern Railroad Company, the Georgia Southern & Florida Railway Company, the Illinois Central Railroad Company, the Central of Georgia Railway Company, the Seaboard Air Line Railway
6 (S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers of Seaboard Air Line Railway), the Atlanta & West Point Railroad Company, the Western Railway of Alabama, and the Southern Railway.

Mr. Perkins Baxter, for the Louisville & Nashville Railroad Company.

Mr. Claudian B. Northrop, for the Southern Railway.

Mr. Luke Lea, for the Nashville Grain Exchange of Nashville, Tennessee, and the Nashville Board of Trade, of Nashville, Tennessee, Intervenors.

Examiner Drayton: We are here this morning to try the case of W. S. Duncan et al. vs. Nashville, Chattanooga & St. Louis Railway et al., No. 1698.

If you give your appearances to the reporter, we will get under way.

Who appears for the Nashville, Chattanooga & St. Louis Railway?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Atlantic Coast Line Railroad Company?

Mr. Andrews: I do.

7 Examiner Drayton: Who appears for the Louisville & Nashville Railroad Company?

Mr. Andrews: Mr. Perkins Baxter.

Examiner Drayton: Who appears for the Southern Railway?

Mr. Andrews: Mr. Claudian B. Northrop and I.

Examiner Drayton: Who appears for the Cincinnati, New Orleans & Texas Railway Company?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Alabama Great Southern Railroad Company?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Georgia Southern & Florida Railway Company?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Illinois Central Railroad Company?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Central of Georgia Railway Company?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the St. Louis & San Francisco Railroad Company?

Mr. Andrews: Mr. E. B. Beers expects to be here.

8 Examiner Drayton: Who appears for the Seaboard Air Line Railway (S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers of Seaboard Air Line Railway)?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Atlanta & West Point Railroad?

Mr. Andrews: I do.

Examiner Drayton: Who appears for the Western Railway of Alabama?

Mr. Andrews: I do.

Examiner Drayton: Do Mr. Wimbish and Mr. Watkins appear for the complainants?

Mr. Wimbish: Yes sir.

Examiner Drayton: And Mr. Luke Lea for the Nashville Grain Exchange, of Nashville, Tennessee, and the Nashville Board of Trade, of Nashville, intervenors?

Mr. Lea: Yes sir.

Mr. Wimbish: I did not know that there was a bill in intervention filed. If there is, I would like to see a copy of it.

Examiner Drayton: Yes; there has been a bill in intervention filed and an order allowing it.

9 Mr. Wimbish: We have never seen the petition of intervention.

Examiner Drayton: Did you serve a copy of that on them?

Mr. Lea: I am under the impression that we did.

Examiner Drayton: There does not seem to be any intervention

petition in this record, but I presume it must have been received by the Commission; otherwise, this order would not be here.

Mr. Lea: It was forwarded here.

Examiner Drayton: It must have been in order for this order to have been entered. However, we will have to determine that later, Mr. Wimbish.

I suppose we are now ready to proceed in this case.

Mr. Wimbish: Shall we proceed with the evidence, or do you desire a statement?

Examiner Drayton: You may make such a statement as you desire, although it all seems to be set out in the petition.

Mr. Wimbish: Yes; I think so.

Whereupon—

H. T. MOORE was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

10 Examiner Drayton: Give your name and initials to the stenographer.

Mr. Moore: H. T. Moore.

Mr. Wimbish: What is your occupation?

Mr. Moore: Traffic Manager of the Atlanta Freight Bureau.

Mr. Wimbish: How long have you held that position?

Mr. Moore: About seven years.

Mr. Wimbish: What is the Atlanta Freight Bureau?

Mr. Moore: It is an organization of the wholesale merchants and manufacturers in Atlanta.

Mr. Wimbish: For what purpose?

Mr. Moore: To secure equal rates into and out of Atlanta, favorable to the merchants.

Mr. Wimbish: What was your employment before you became Traffic Manager of the Atlanta Freight Bureau?

Mr. Moore: I was associated with the Southern Railway in Atlanta.

Mr. Wimbish: Have your work and your experience been such as to render you familiar with rates and tariffs?

Mr. Moore: Yes sir.

Mr. Wimbish: Have you made an examination of the tariffs for the purpose of ascertaining what, if any, differentials exist

11 in Southern Territory, particularly Mississippi Territory, between grain and grain products in carload lots and less than carload lots?

Mr. Moore: I have.

Mr. Wimbish: Have you a table showing some of those figures?

Mr. Moore: I have prepared a statement showing the carload and less than carload ratings on flour and grain and its products from Cincinnati to Louisville, Kentucky, and Nashville, Tennessee, Hattiesburg and Laurel, Mississippi, and other points in Mississippi Valley territory.

Mr. Wimbish: Now, Mr. Moore, have you a statement showing the rates and differentials from Cincinnati to Louisville and Nashville and Hattiesburg and Laurel, Mississippi? What is the rate on

flour from Cincinnati to Hattiesburg and Laurel in carloads, and what is it in less than carload lots?

Mr. Moore: The L. C. L. rating on flour from Cincinnati to Hattiesburg and Laurel, Mississippi, is 32½ cents per hundred pounds.

Mr. Wimbish: I want you to give the rate and differential.

Mr. Moore: The rate from Cincinnati on flour, sacks or
12 barrels, carload minimum 30,000 pounds, 27½ cents; less than carload 41 cents, a difference of 13½ cents.

Mr. Wimbish: Now, give the rates and differentials on grain from Cincinnati to Hattiesburg and Laurel.

Mr. Moore: The rate on grain, car lots, from Cincinnati to Hattiesburg and Laurel, Mississippi, is 32 cents; less than carloads, 37 cents.

Mr. Wimbish: What is that differential?

Mr. Moore: Five cents.

Mr. Wimbish: Now give the same with respect to corn, oats, barley, etc.

Mr. Moore: The carload rate on corn, barley, oats and rye from Cincinnati to Hattiesburg and Laurel, Mississippi, is 24 cents carload; less than carload 37 cents.

Mr. Wimbish: A differential of 13 cents?

Mr. Moore: Thirteen cents.

Mr. Wimbish: Without giving the rates, state what the differential is from Louisville to these same points of destination. They are the same as the Cincinnati differentials; are they not?

Mr. Moore: Practically.

Mr. Wimbish: Are they not, absolutely?

13 Mr. Moore: That is true.

Mr. Wimbish: What is the differential from Nashville to Hattiesburg and Laurel, on flour?

Mr. Moore: 10½ cents per hundred pounds.

Mr. Wimbish: What is the differential on corn, barley, oats, etc.?

Mr. Moore: Five cents.

Mr. Wimbish: Is it not 7½ cents?

Mr. Moore: The carload rate from Nashville on corn, barley and oats is 20 cents per hundred pounds, and on less than carload lots it is 30 cents. That would be 10 cents.

Mr. Wimbish: Ten cents?

Mr. Moore: Ten cents per hundred pounds.

Mr. Wimbish: Now take the rates to Jackson and Meridian, Mississippi. What, if any, differential exists from Cincinnati on flour?

Mr. Moore: A difference of six cents in favor of carload lots.

Mr. Wimbish: What is the differential from Louisville on flour? You made these figures, and it might save time if you would look at them (handing statement to witness).

Mr. Moore: Six cents.

14 Mr. Wimbish: What is it from Nashville?

Mr. Moore: Three cents.

Mr. Wimbish: What is the differential on wheat from Cincinnati to Louisville and Nashville, stating them separately?

Mr. Moore: Five cents from Cincinnati; five from Louisville, and two from Nashville.

Mr. Wimbish: And what is the differential on corn, rye, oats and barley?

Mr. Moore: From Cincinnati to Louisville 7½ cents per hundred pounds; and Nashville, 4½ cents per hundred pounds.

Mr. Wimbish: Now consider the rates to Aberdeen, West Point, Starkville and Columbus, Mississippi, and give us the information I have been seeking, without my having to ask so many questions.

Mr. Moore: From Cincinnati the rate is four cents per hundred pounds higher in less than car lots than car lots; from Louisville two cents; and from Nashville ½ cents per hundred pounds. On corn from Cincinnati and Louisville and Nashville to Aberdeen, West Point, Starkville, and Columbus, it is two cents per hundred pounds.

Mr. Wimbish: That is corn, rye, oats, barley, and all classes together; is it?

15 Mr. Moore: Yes sir.

Mr. Wimbish: To Holly Springs, Mississippi?

Mr. Moore: From Cincinnati, Louisville and Nashville to Holly Springs, a difference between 3½ cents per hundred pounds between car lots and less than car lots. On corn from Cincinnati to Holly Springs four cents per hundred pounds more in less than car lots than in car lots; five cents from Louisville and three cents from Nashville.

Mr. Wimbish: Is there also a differential on wheat in that tariff?

Mr. Moore: There appears to be a difference of two cents from Cincinnati, three cents from Louisville, and one cent from Nashville; from Cincinnati and Louisville to Winona a difference of four cents per hundred pounds; and from Nashville 2½ cents.

Mr. Wimbish: On what?

Mr. Moore: On flour. On corn five cents difference from Cincinnati to Winona, Mississippi; Louisville to Winona, four cents; and three cents from Nashville to Winona, Mississippi.

Mr. Wimbish: Will you please file with the report, to be marked "Exhibit Moore No. 1," a copy of this statement, Mr. Moore?

16 Mr. Moore: Yes.

(The statement referred to is filed herewith, marked "Exhibit Moore No. 1.")

Mr. Wimbish: Have you a memorandum taken from Official Classification territory regarding the differentials allowed in that territory?

Mr. Moore: I have.

Mr. Wimbish: Will you hand one of those to the Examiner?

Mr. Moore: Yes sir.

Mr. Wimbish: Now, Mr. Moore, I am referring to class rates. Please state if in Official Classification territory there is any difference in the rate on flour in car lots and the rate in less than car lots, and, if so, what the difference is.

Mr. Moore: In quantities less than 200 barrels, estimated at 200

pounds per barrel, less than carload, Class 5; in quantities of 200 barrels and over, estimated at 200 pounds per barrel, Class 6—a difference of one rating.

Mr. Wimbish: As I understand you, then, a shipment of less than 40,000 pounds is 5th class?

Mr. Moore: That is true.

17 Mr. Wimbish: And a carload exceeding 40,000 pounds is 6th Class?

Mr. Moore: 40,000 pounds and over, 6th Class.

Mr. Wimbish: Does that same difference in classification in car lots and less than car lots apply to barley, corn, wheat and rye?

Mr. Moore: The same difference exists.

Mr. Wimbish: And the same also applies to oats, and the minimum is 35,000 pounds?

Mr. Moore: That is true. Oats, 17,000 pounds and over and less than 35,000 pounds, is 5th class; 35,000 pounds and over 6th class.

Mr. Wimbish: With respect to hay, what is the differential there?

Mr. Moore: Hay, pressed in bales, carload minimum weight 20,000 pounds; less than carload, 1st class; carloads, fifth class—a difference of four ratings.

Mr. Wimbish: Did you prepare this statement from the tariffs and publications?

Mr. Moore: They were obtained from Official Classification No. 32, I. C. C.—O. C. No. 32, July 1, 1908.

Mr. Wimbish: Will you please file that as an exhibit, to be marked "Exhibit Moore No. 2.")

18 Mr. Moore: Yes sir.

(The paper referred to is filed herewith, marked "Exhibit Moore No. 2.")

Mr. Wimbish: Have you made a similar statement applicable to Western Classification territory?

Mr. Moore: I have.

Mr. Wimbish: Mr. Moore, explain what territory is included within Official Classification territory.

Mr. Moore: That territory lying north of the Potomac and Ohio and east of the Mississippi Rivers.

Mr. Wimbish: And what territory is included in Western Classification?

Mr. Moore: West of the Mississippi River.

Mr. Wimbish: Now, with respect to the Western Classification territory, state the difference in classification between flour in car lots and in less than car lots.

Mr. Moore: In sacks, less than carloads, 4th class; carload, 5th class.

Mr. Wimbish: Grain?

Mr. Moore: In bags, 4th class; carload, Class B.

Mr. Wimbish: Corn?

19 Mr. Moore: The same.

Mr. Wimbish: Hay?

Mr. Moore: Hay and straw, less than carload, Class 3; carload, Class C; minimum 20,000 pounds.

Mr. Wimbish: We seem to have only one copy of that, and we will have to file that as the original.

(The paper referred to is filed herewith, marked "Exhibit Moore No. 3.")

Mr. Wimbish: What territory is embraced in Southern Classification?

Mr. Moore: The territory lying south of the Potomac and Ohio and east of the Mississippi Rivers.

Mr. Wimbish: Have you made an examination of the classifications in this Southern territory?

Mr. Moore: I have.

Mr. Wimbish: Have you prepared a statement?

Mr. Moore: I have prepared a comparative statement of less than carload and carload ratings on a few of the leading commodities, as shown in Southern Classification No. 35, I. C. C. May 1, 1908.

20 Mr. Wimbish: Well, to what per cent of the whole does the Southern Classification apply, the different classes of the equipment or the differential between carload and less than carload; to what percentage of the whole traffic do the differentials apply in Southern territory?

Mr. Moore: I think it is 28 per cent.

Mr. Northrop: Mr. Wimbish, will you kindly ask him what he means by that? I do not want to interrupt you, but I would like to know just what he means.

Mr. Wimbish: We are getting at that right now.

Mr. Northrop: Very well.

Mr. Moore: 1902, articles classified as less than carload and also as carload .63 and .65 per cent; classification as carload, with no ratings for less than carload, is 1.96 per cent.

Mr. Wimbish: I may state that those figures were taken from the railways of the United States in 1902, publication of the Interstate Commerce Commission, also entitled, "A forty-year view of changes in freight tariffs, prepared by the Auditor of the Commission," on page 39.

Examiner Drayton: What you say about 28 per cent applies to the first tariff?

21 Mr. Wimbish: I want him to qualify his first statement in regard to 28 per cent. State whether or not you have examined that.

Mr. Moore: I will examine that a little later and correct that part of my testimony.

Mr. Wimbish: In the absence of the defendants in this case, they deny that there is any difference in the class rates on molasses and sugar applying in Southern territory? How is that affected by the special commodity rate?

Mr. Moore: It is true the ratings on molasses and sugar in Southern Classification applies to any quantity moving from New Orleans,

molasses under an established commodity rate of 24 cents in car lots and 28 cents in less than car lots.

Mr. Wimbish: How about molasses from Memphis and Cincinnati to Atlanta?

Mr. Moore: The same differentials.

Mr. Wimbish: Does it apply to other destinations than Atlanta?

Mr. Moore: Generally, to all common points or junction points in the Southeastern territory.

Mr. Moore: Well, how about sugar?

Mr. Wimbish: There is a difference of three cents on sugar between car lots and less than car lots; also New Orleans
22 to Atlanta and other points in the Southeast.

Mr. Wimbish: And from Louisville?

Mr. Moore: The same, three cents?

Mr. Wimbish: These are special commodity rates, as I understand?

Mr. Moore: Yes sir.

Mr. Wimbish: Are there any differentials recognized on food preparations in Southern Classification territory?

Mr. Moore: On food preparations, N. O. S. and in sacks or boxes, less than carload, Class 4; in kegs and barrels, less than carload, Class 5; packed or in sacks, carload, Class 6.

Mr. Wimbish: There are two differentials in respect to food preparations, the first differential being on package and the second being on carload or less than carload quantity?

Mr. Moore: Yes sir.

Mr. Wimbish: Will you please file that as Exhibit Moore No. 4?

Mr. Moore: Yes sir.

(The above-mentioned paper is filed herewith, marked "Exhibit Moore No. 4.")

23 Mr. Wimbish: Mr. Moore, does the Nashville, Chattanooga & St. Louis Railway apply a differential on grain and flour as between car lots and less than car lots to stations along its line? If so, please state to and from what points, and what those differentials are.

Mr. Moore: The Nashville, Chattanooga & St. Louis Railway have established carload and less than carload ratings on flour in sacks and grain and grain products, taking Class D rates, from Cairo, Illinois, to local points on its line between Chattanooga and Atlanta.

Mr. Wimbish: Does that apply to all stations on the Western & Atlantic Railroad, except Chattanooga, Atlanta and Cartersville?

Mr. Moore: Yes sir.

Mr. Wimbish: How near to Atlanta do those differentials apply?

Mr. Moore: The first station north of Atlanta—Bolton.

Mr. Wimbish: How far is that?

Mr. Moore: I presume it is five or six or ten miles from Atlanta.

Mr. Wimbish: State what the differentials are, in cents per hundred pounds; state what they are from the lowest to the high-
24 est.

Mr. Moore: From Cairo to Chickamauga, Tennessee, the rate is a half a cent difference between carloads and less than carloads.

Mr. Wimbish: On what?

Mr. Moore: On flour, and ranges from five cents per hundred pounds, to Kenesaw, Georgia.

Mr. Wimbish: How about Marietta?

Mr. Moore: Marietta is five cents. That is twenty miles north of Atlanta. On grain and grain products it is about the same difference. These tariffs were compiled from the free and arbitrary list No. 17, issued by the Nashville, Chattanooga & St. Louis Railway on August 1, 1908.

Mr. Wimbish: Will you please file those as Exhibits Moore Nos. 5 and 6?

Mr. Moore: Yes sir.

(The papers referred to are filed herewith, marked "Exhibits Moore Nos. 5 and 6.")

Mr. Wimbish: What are the regulations applicable to the shipment of grain from Ohio and Mississippi River points to the Southeast; what is the minimum?

Mr. Moore: On corn?

25 Mr. Wimbish: Bulk corn.

Mr. Moore: Corn, 40,000 pounds; oats 32000 pounds minimum; rye 40000 pounds minimum; N. O. S. minimum 40,000 pounds.

Mr. Wimbish: What rate does bulk corn in car lots, exceeding the minimums have named, take?

Mr. Moore: In southeastern territory?

Mr. Wimbish: Yes.

Mr. Moore: From Ohio River to Southeastern territory?

Mr. Wimbish: Yes.

Mr. Moore: Class D.

Mr. Wimbish: Whi- is the same as any quantity rate?

Mr. Moore: The same as any quantity rate.

Mr. Wimbish: Can bulk grain be shipped at all in quantities less than the minimums named?

Mr. Moore: No; unless it is at 40,00 pounds minimum, and the class to which it belongs is rated in the Southern Classification.

Mr. Wimbish: With respect to bulk grain so shipped, do the rules require that it shall be loaded by the shipper and unloaded by the receiver?

Mr. Moore: Rule 27, Circular No. 7 to Southern Classifica-

26 tion No. 35, I. C. C. No. 10, reads as follows:

"Owners will be required to load and unload bulk freight in carloads, and all other carloads of freight on which a specific carload rating is accorded, except that the carriers reserve the right to unload at their convenience."

Mr. Wimbish: Is it true then that bulk grain shipped in carloads would result in a greater cost to the shipper than sacks of grain in less than car lots? Does not grain sacked in less than car lots take the same rate per hundred pounds as bulk grain in car lots?

Mr. Moore: That is true.

Mr. Wimbish: Then, the cost of loading and unloading would

be added to the cost of delivering the bulk grain, over the cost of grain in sacks in less than carload quantities?

Mr. Moore: Yes sir.

Mr. Wimbish: Is Nashville subject to the same regulations with respect to bulk grain?

Mr. Moore: From the Ohio River to Nashville, the same classification applies.

Mr. Wimbish: What, if any, privileges have dealers in Nashville that enable them to handle this grain and deliver it —
27 Southeastern destinations more cheaply than Atlanta can? Is there any allowance made by the railroad companies to the dealers for sacking the grain?

Mr. Moore: I understand there is a ¾ cent elevation paid, an allowance made of ¾ cent at Nashville to the elevators and to warehouses for sacking facilities.

Mr. Wimbish: Is the Nashville dealer allowed to inspect his grain and sack his grain and then re-ship in sacks?

Mr. Moore: Under the rules and regulations governing rebilling at Nashville, filed with the Commission, that is permitted.

Mr. Wimbish: I will get you to refer to the N. C. & St. L. general rules applicable to re-shipping at Nashville; that is, Circular I. C. C. 1588-A.

Mr. Moore: This is circular No. 2875-A issued by the N. C. & St. L. Railway, I. C. C. 1588-A. Do you want me to read this?

Mr. Wimbish: I do not care to read it into the record; but I would like the witness to state just what those regulations are, or he will read it into the record, if it is desired.

Examiner Drayton: He can state it in a shorter way than
28 that.

Mr. Moore: Section 3 of Circular I. C. C. 1588-A reads as follows:

"Elevation will be paid to public or private elevators and re-shippers of grain handling business through stores or warehouses having sacking facilities."

Examiner Drayton: Does that seem to fix the amount of the allowance?

Mr. Moore: Yes sir.

Mr. Wimbish: Will you explain the methods permitted by the rules and regulations of the carriers in re-billing at Nashville, giving a practical application to a car of grain from Louisville to Nashville, and the subsequent re-billings to Southeastern destinations?

Mr. Moore: Grain can be drawn from points on the Ohio River, Cincinnati and Louisville, Cairo, Memphis, and shipped into Nashville, on which the carriers charge their local rate. Grain elevated is sent to warehouses in Nashville, and it is unloaded, classified, graded and cleaned and sacked, and then re-shipped to points in Southeastern territory, on a through rate from origin to
29 point of destination.

Mr. Wimbish: How much, if any, free time is allowed in Nashville?

Mr. Moore: Ten days I understand is the free limit. Over that,

storage charges are assessed by the elevator. The warehouses, I presume, do not charge at all.

Mr. Wimbish: How long are these expense bills for re-shipping purposes good?

Mr. Moore: I understand six months.

Mr. Wimbish: I am speaking of the regulations in that book (indicating). I want to be a little more direct and positive, although that may be right.

Mr. Moore (after examination): Six months.

Mr. Wimbish: Let me see if I understand the practical operation. Suppose a carload of grain moves from Louisville into Nashville. If it would move on a local bill at the local rate, it would be ten cents a hundred pounds?

Mr. Moore: That is the tariff rate from Louisville to Nashville.

Mr. Wimbish: Then the Nashville dealer would have ten days within which to inspect, grade, clean and sack the grain and re-
ship it, without any charge being made against him at all
30 by the carrier?

Mr. Moore: That is true.

Mr. Wimbish: If it should be elevated and sacked by a dealer having sacking facilities, not only would there be no charge against the dealer, but he would receive from the railroad company ¾ of a cent per hundred pounds allowance?

Mr. Moore: That is true.

Mr. Wimbish: Then that grain may be shipped out to ten destinations in Georgia and the Carolinas, at different times, on the through rate from Louisville, the point of origin, to the point of final destination?

Mr. Moore: That is true.

Mr. Wimbish: When the dealer desires to re-ship at Nashville, he presents the agent of the N. C. & St. L. Railway, we will say, his paid expense bill within six months from the time he was paid, and the agent of the N. C. & St. L. pays to the shipper in cash the proportion accruing to the Louisville & Nashville north of Nashville, out of the through rate from Louisville to the point of destination, to be carried on the bill as advance charges. Is that right?

Mr. Moore: That is correct.

Mr. Wimbish: Now, if that proportion is 7 cents out of a
31 10 cent local haul, then, after the consignee has received and
paid the freight charges to final destination, the shipper at Nashville gets back, through the regular claim department, this difference of 3 cents?

Mr. Moore: If that was the difference between the proportions accruing to the lines at Nashville and the local rate. That difference, whatever it may be, is settled in that manner.

Mr. Wimbish: The result of which is that the less than carload quantity of sacked grain going into Griffin reaches Griffin on the through rate from Louisville instead of the rate from Nashville?

Mr. Moore: They are protected by the through rate from the point of origin.

Mr. Wimbish: What is the rate from Louisville to Griffin, Georgia?

Mr. Moore: The basis for Griffin is 3 cents from Macon; the rate to Macon is 26 cents, and 3 cents make 29 cents per hundred pounds.

Mr. Wimbish: What would be the combination from Louisville; take the local from Louisville to Nashville and from Nashville to Griffin?

Mr. Moore: I haven't the figures on that.

32 Mr. Wimbish: Well the rate from Nashville to Griffin being 22, the combination rate would be 32 cents per hundred pounds, and the through rate 29 cents?

Mr. Moore: Yes sir.

Mr. Wimbish: What would it cost the Atlanta dealer to buy a carload of grain in Louisville and carry it to Atlanta, sack it and deliver it to a consignee in Griffin?

Mr. Moore: It would cost him 32 cents.

Mr. Wimbish: Combination on Atlanta, I mean.

Mr. Moore: It is 32 cents.

Mr. Wimbish: So that Atlanta, not having the re-billing privilege, cannot keep the grain over in Atlanta for the purpose of inspection and weighing and sacking it for Griffin for less than 32 cents?

Mr. Moore: That is true.

Mr. Wimbish: Whereas the Nashville dealer may do that and deliver the grain there for 29 cents?

Mr. Moore: Three cents less.

Mr. Wimbish: In addition to that, what does the allowance made the dealer in Nashville of this ¾ cents per hundred pounds and the free time, amount to?

Mr. Moore: Twelve dollars, plus the three, making a total
33 of fifteen dollars which the Nashville dealer has less than the Atlanta merchant.

Mr. Wimbish: That applies to flour as well as to grain?

Mr. Moore: Yes sir.

Mr. Wimbish: What is the distance from Atlanta to Wimbish?

Mr. Moore: 44 miles; 43 miles.

Mr. Wimbish: How would that apply to Newman?

Mr. Moore: The rate on grain from Ohio River to Newman is made in the same way; three cents from Macon, making the through rate 29 cents. The same thing applies to Newman, Georgia, as applies to Griffin.

Mr. Wimbish: Suppose that the grain or flour is brought to Nashville and re-billed to Palmetto, Georgia, a local station on the Atlanta & West Point Railway, twenty-five miles from Atlanta. What would be the cost to the Nashville dealer to deliver this grain or flour in any quantity at Palmetto?

Mr. Moore: On Points basing on Atlanta, the Nashville dealer has the advantage of ¾ of a cent elevation, and, in addition, $2 switching. On all cars transferred to a connecting line and to local

points in Atlanta, there is a switching charge of $2 per car;
34 while there is no switching charge at Nashville to local points basing on Atlanta. There is a difference of ¾ of a cent in elevation, which is $3, and $2 switching per car; that would make $5 per car that the Nashville dealer has over the Atlanta dealer. That is on all cars that are switched to a connecting line or local points.

Mr. Wimbish: I understand. Suppose we take East Point, for illustration. That is seven miles from Atlanta.

Mr. Moore: The rate from Louisville, Cincinnati and other Ohio River crossings to East Point is the same as Atlanta; East Point taking Atlanta rates.

Mr. Wimbish: Now, the Atlanta rate to East Point——

Mr. Moore: 3½ on Class D

Mr. Wimbish: Grain and hay?

Mr. Moore: 4½ on flour per hundred pounds.

Mr. Wimbish: What is the advantage that the Nashville man can obtain through these rates and preferences over the Atlanta dealer, in shipping a car of flour or grain to East Point? First, take the elevation charge of $4 a car, the difference which the dealer in Atlanta would have to pay, the local rate, which the dealer in Nashville would not have to pay.

Mr. Moore: On flour and grain.

35 Mr. Wimbish: Take grain—3½ cents per hundred pounds.

Mr. Moore: The elevation would be $3 a car, and the local from Atlanta to East Point 3½ cents on a car of 40,000 pounds would make $14 the Atlanta dealer would have to pay, making a total of $17 which the Nashville dealer would have over the Atlanta dealer.

Mr. Wimbish: On grain and hay?

Mr. Moore: On grain and hay.

Mr. Wimbish: On flour?

Mr. Moore: That would be $3 elevation charges, and $18, the rate being from Atlanta to East Point 4½ cents on a car of 40,000 pounds, or $18, which, plus the $3 elevation, makes a total of $21 which the Nashville dealer has over the Atlanta dealer.

Mr. Watkins: In addition to that, would there be any switching charges to the Atlanta merchant?

Mr. Moore: There would be if the warehouse was not located on the Atlanta & East Point Railway or the Central of Georgia.

Mr. Wimbish: There would be $2 more per car?

Mr. Moore: On the grain, $19 per car; a total of $23 on
36 flour which the Nashville dealer would have over the Atlanta dealer.

Mr. Wimbish: Well, take one more illustration to East Point. Where is East Point located?

Mr. Moore: It is a local station on the line of the Atlanta & East Point Railway, six miles south of Atlanta.

Mr. Wimbish: What is the rate on grain from the Ohio River points to East Point?

Mr. Moore: The rate on grain from Louisville and Cincinnati to East Point, Georgia, is 29½ cents per hundred pounds.

Mr. Wimbish: What is the Atlanta combination on grain?
Mr. Moore: 34 cents per hundred pounds.
Mr. Wimbish: What is the river rate on flour?
Mr. Moore: 30 cents per hundred pounds, carload.
Mr. Wimbish: What is the Atlanta combination?
Mr. Moore: It would be 35 cents per hundred pounds.
Mr. Wimbish: Well, then, how much cheaper would a Nashville merchant bring grain or flour to Nashville, with the privileges afforded there, and deliver in West Point, than the Atlanta dealer can?

37 Mr. Moore: The Atlanta dealer would have a charge of $3 per car elevation that the Nashville dealer would not have. The difference in the rate of 100 pounds on grain would be $18, plus $2 switching charge at Atlanta, making a total of $23, provided the dealer was not located on the line of the Atlanta & East Point Railway. On flour the Nashville dealer has an advantage of $3 per car elevation at Nashville, a difference of 5 cents in the rate, which would make $20 per car; $2 switching charges at Atlanta, or a total of $25 per car that the Nashville dealer has over the Atlanta dealer.

Mr. Wimbish: Now, Mr. Moore, these illustrations we have given, basing on Atlanta and nearby points, apply equally in the same way to Macon, Columbia, Augusta, Athens and Rome?
Mr. Moore: That is true.
Mr. Wimbish: Mr. Moore, has the matter of re-billing at Nashville and of the differential on grain and flour been brought to the attention of the carriers by the parties interested in Atlanta?
Mr. Moore: There was a conference between the grain dealers of Atlanta and the grain carrying lines in the Southeastern territory on February 12, 1908.
Mr. Wimbish: Have you a copy of the proceedings of that meeting?

38 Mr. Moore: I have.
Examiner Drayton: Will you just file that?
Mr. Wimbish: Just state who were present.
Mr. Moore (reading): Present for the grain dealers: A. P. Morgan, Chairman; G. C. Rogers, B. H. Dunn, Jr.; A. W. L. Hodnett, and C. H. Kelly.
Present for the Carriers: N. C. & St. L. Ry., H. F. Smith, V. P. & T. M.; Charles Barham, G. F. A.; J. A. Sams; D. F. A.
A. C. L. R. R., R. A. Brand, F. T. M.
M. & O. R. R., Haiden Miller, F. T. M.
C. of Ga. Ry., W. A. Winburn, Second Vice President, C. T. Airey, F. T. M.
Southern Railway, J. M. Culp, Vice President; J. S. B. Thompson, Asst. to President.
L. & N. R. R., A. R. Smith, Third Vice President; J. A. Ridgely, D. F. A.
C. N. O. & T. P. Ry., G. P. Biles, F. T. M.
Georgia R. R., A. G. Jackson, G. F. A.

M. D. & S. Ry., J. T. Wright, Vice President; J. A. Streyer, G. F. A.
Frisco System, E. T. Wilcox, A. G. F. A.
39 G. S. & F. Ry., S. F. Parrott, Vice President.
A. & W. P. R. R., E. T. Eckles, G. F. A.
A. B. & A. R. R., J. J. Campion, G. F. A.

Mr. Harry T. Moore, of the Atlanta Freight Bureau, was also present.

Mr. Wimbish: Without going into the contents of those minutes, what was the result of that meeting? Did it result in the appointment of a committee?

Mr. Moore: Yes sir. I will read to you an extract from the proceedings of that meeting:

"The wishes of the Committee of Grain Dealers, as expressed in the above statement, were discussed at length, and said Committee was assured that the carriers represented would give every earnest consideration to the views and wishes expressed, and determine at as early a date as practicable whether or not all or any of the expressed wishes could be complied with.

"On motion, the Grain Dealers Committee withdrew, and the representatives of the carriers, after further discussion, referred the matter to the following Committee of Atlanta terminal lines, with request that said Committee meet and give consideration to the
40 matter of the practicability of establishing a differential rate on commodities in classes C. D. & F. in less than carload rates, such differential to be reached by placing less than carload shipments in a higher class than carload shipments."

Examiner Drayton: File that as an exhibit.

Mr. Watkins: Instead of filing it as an exhibit, I would ask that it be copied into the record. It is not very long, and we have only one copy.

The proceedings of the meeting referred to are in the words and figures following:

"Proceedings of meeting between a committee of grain dealers of Atlanta, Ga., and the representatives of a number of grain carrying lines of the South, at Piedmont Hotel, Atlanta, Ga., February 12th, 1908.

Present:

For the Grain Dealers:

A. P. Morgan, Chairman,
C. C. Rogers,
B. H. Dunn, Jr.
A. W. Hodnett,
C. H. Kelly.

41 "For the Carriers:

N. C. & St. L. Ry.....	H. F. Smith, V. P. & T. M.
	Charles Barham, G. F. A.
	J. A. Sams, D. F. A.
A. C. L. R. R.....	R. A. Brand, F. T. M.

M. & O. R. R.	Haiden Miller, F. T. M.
C. of Ga. Ry.	W. A. Winburn, Second Vice Pres.
	C. T. Airey, F. T. M.
Sou. Ry.	J. M. Culp, Vice President.
	J. S. B. Thompson, Ass't to Pres.
L. & N. R. R.	A. R. Smith, Third Vice President.
	J. A. Ridgely, D. F. A.
C. N. O. & T. P. Ry.	G. P. Biles, F. T. M.
Georgia R. R. R.	A. G. Jackson, G. F. A.
S. A. L. Ry.	J. A. Pride, A. G. F. A.
M. D. & S. Ry.	J. T. Wright, Vice President.
	J. A. Streyer, G. F. A.
Frisco System.	E. T. Wilcox, A. G. F. A.
G. S. & F. Ry.	S. F. Parrott, Vice President.
A. & W. P. R. R.	E. T. Eckles, G. F. A.
A. B. & A. R. R.	J. J. Campion, G. F. A.

42 "Mr. Harry T. Moore, of the Atlanta Freight Bureau, was also present.

"Mr. S. F. Parrott was elected Chairman.

"Mr. A. P. Morgan, Chairman of the Committee of Grain Dealers, read the following petition or statement:

'You were invited to Atlanta for the purpose of having a friendly conference with a committee representing the Atlanta Wholesale *Grocers* grain dealers, and to discuss the subject of rebilling of hay, grain and grain products in Atlanta, also a reasonable differential between carlots and less than carlots.

'Atlanta dealers in the foregoing commodities in carlots respectfully request, and urge the carriers to promulgate, and put in practice at the earliest date practicable, the following:

'(1) The rebilling of hay, grain and grain products on the same basis, and with like privileges in Atlanta, as the carriers have voluntarily granted to the City of Nashville.

'(2) A reasonable differential between carlots, and less than carlots, on C. D. & F. products (hay excepted) applicable to interstate traffic.

43 'Rebilling:

'In support of the foregoing we beg to say that owing to Atlanta's geographical situation in connection with our initial and terminal lines, we are in position to serve a very large part of the Southeastern territory under favorable rebilling arrangements. As it is now, Nashville not only sells Atlanta proper, but to all points North, South, East and West of us, while Atlanta's trade is limited to our City, and a few points basing on Atlanta.

'This complaint is not a new story with a single one of you, and we feel that it will not be necessary to cite specific cases to illustrate the undue advantages that Nashville enjoys over Atlanta, by reason of her exceptional rates, and special grain privileges, which has been denied Atlanta, and in our opinion amounts to unjust discrimination in favor of Nashville. We earnestly urge you to either place

Atlanta on an equaliy with competing points, or withdraw the special privileges from Nashville.'

'Differentials:

'The interests which we represent feel that by reason of the present adjustment authorizing any quantity rates on sack flour,
44 and grain, enables the Nashville dealer to ship into Atlanta proper, and points beyond, in small quantities, as cheap, and cheaper to many points, than the Atlanta dealer can purchase in carlots and reship in solid cars.

'We feel that the cost of service alone would justify a difference in favor of carlots. The carload buyer provides his own warehouse, located on his own rails, loads and unloads the car at his own expense; indeed, the only expense to the terminal line is the nominal cost of a switching service.

'On through shipments moving in less than carlots, necessitates the switching and handling of cars at terminal points, increases the labor rolls, depot facilities, insurance, and results in the filing of many loss and damage claims that do not occur when cars moving solid under seal from one consignor to one consignee, and one destination.

'We are of the opinion that a differential of five (5) cents per one hundred pounds (100), would be a fair and reasonable difference in favor of carlot shipments.

'We do not seek to reduce your revenue; indeed the Atlanta dealer would not object to your fixing the carload minimum at forty thousand (40,000) pounds, or greater (except when marked capacity of car is less), thereby enabling you to secure the maximum earning capacity and revenue of each car moving under full
45 load.'

"The wishes of the Committee of Grain Dealers, as expressed in the above statement, were discussed at length, and said Committee was assured that the carriers represented would give very earnest consideration to the views and wishes expressed, and determine at as early a date as practicable whether or not all or any of the expressed wishes could be complied with.

"On motion, the Grain Dealers Committee withdrew, and the representatives of the carriers, after further discussion, referred the matter to the following Committee of Atlanta terminal lines, with request that said Committee meet and give consideration to the matter of the practicability of establishing a differential rate on commodities in classes C, D, & E, in less than carload lots, such differential to be reached by placing less than carload shipments in a higher class than carload shipments:

"Committee:

Louisville & Nashville Railroad, *Chairman*.
Georgia Railroad.
Southern Railway.
Western & Atlantic Railroad.

46 Seaboard Air Line Railway.
Central of Georgia Railway.
Atlanta & West Point Railroad.

"On motion the meeting adjourned.

S. F. PARROTT,
Chairman."

Mr. Watkins: Mr. Moore, is that the first time that this question of rebilling and request for differential has been brought to the attention of the carriers?

Mr. Moore: It was presented by the same parties in Atlanta to the carriers at what is known as the Piedmont Conference in November, 1904.

Mr. Watkins: Did you examine the original letters filed in the case of the A. P. Morgan Grain Company, et al., vs. the Atlantic Coast Line Railway, et al., before the Interstate Commerce Commission, Docket No. 1671, tried with the case of the Railroad Commission of Alabama vs. the Louisville & Nashville Railroad Company, No. 1683, and the Railroad Commission of Georgia vs. The Atlantic Coast Line Railroad, Docket No. 1727?

Mr. Moore: I did.

Mr. Watkins: Did you make copies of any original letters
47 filed in that case, the original letters being produced by the defendant carriers therein?

Mr. Moore: I did.

Mr. Watkins: The first letter appears to be signed by T. C. P. Who is T. C. P.?

Mr. Moore: Mr. T. C. Powell, Vice President of the Southern Railway, and also Vice President of the C. N. O. & T. P. Railway.

Mr. Watkins: Who is the Mr. Biles to whom it is addressed, and what position does he occupy?

Mr. Moore: He is Freight Traffic Manager of the C. N. O. & T. P. in Cincinnati.

Mr. Watkins: Is that a correct copy of the original letter in the case I have just described?

Mr. Moore: It is.

Examiner Drayton: You may file it as an exhibit.

Mr. Watkins: Exhibits are often misplaced, and if you have no objection, I would prefer to have it copied in the record. It is short, comprising but a few pages.

Examiner Drayton: Oh, yes; I thought it was the whole mass of papers.

The papers referred to are in the words and figures fol-:

48 "WASHINGTON-CINCINNATI,
Feb. 20th, 1908.

Mr. BILES:

Reshipping C. D. & F. Atlanta, interior points to the Southeast. Yours 16th, file Rate 3-408-A.

My own view is that, if through this agitation the reshipping at

Nashville is eliminated by the Interstate Commerce Commission, even the Nashville Railroad will not offer much opposition.

With reference to the car load and less than car load classifications on C. D. & F., personally I see no objection to the proposition as a principle, but practically there are so many difficulties in the way of bringing about a change of this kind that I doubt whether it can be accomplished. Our main difficulty, of course, will be the Railroad Commission, who will pretend to protect their country constituents against the larger shippers. The bread of the widow and orphan will cost more.

I think that five cents is too much. It would be more satisfactory to make the rates in L. C. L. 20 per cent higher than the C. L. rates. This would then take care of the local arbitrary as
49 well as the rates to the junction points.

I believe a percentage arrangement is more practicable than the other proposition to change the classification.

T. C. P."
(T. C. POWELL,
V. P. So. Ry. Co.)

V-21.
Copy."

Mr. Watkins: Mr. Moore, after that Atlanta conference, the minutes of which are to go into the record, did you find from the file I have already mentioned that the special sub-committee to which the matter was then referred, took any action?

Mr. Moore: The sub-committee and others interested in this question met in Atlanta on March 26, 1908.

Mr. Watkins: How was the action of that committee disclosed in the papers that you examined, filed in the cases above described?

Mr. Moore: I have a letter which was copied from the files of Mr. E. C. Powell, in the A. P. Morgan Grain case, that you
50 have stated, from A. R. Smith, Third Vice President of the Louisville & Nashville Railroad Company, who was chairman of the sub-committee, and addressed to Mr. S. F. Parrott, care of G. S. & F. R. R., Macon, Ga. I will state that Mr. Parrott presided at the Piedmont Conference held between the grain dealers and grain carrier lines on February 12, 1908.

Mr. Watkins: Is the copy which you have in your hand of this letter written by A. R. Smith, Chairman, addressed to S. F. Parrott, Chairman, correctly copied from the original letter filed in the Morgan and other cases?

Mr. Moore: That is true.

Mr. Watkins: This letter discloses that they adopted at this meeting the requests of the Atlanta shippers, in so far as to recommend a subsequent meeting to be held and the appointment of a differential.

Now, that being an important letter, I would ask that we be allowed to copy it into the record. It is only a little over a page long, and I do not know that it is necessary to read it now.

Examiner Drayton: No.

51 The letter referred to is in the words and figures following:

"Louisville & Nashville Railroad Company,
Traffic Department.

Office of the Third Vice-President, Addison R. Smith, 3rd Vice-President.

LOUISVILLE, KY., 3–28–1908.
36154

Mr. F. S. Parrott, Chairman, c/o G. S. & F. R. R., Macon, Ga.

DEAR SIR: The following action was taken at meeting held in Piedmont Hotel, Atlanta, Ga., on February 12th, between a
52 committee of grain dealers of Atlanta and a number of the grain carrying lines of the South:

'On motion, the grain dealers' committee withdrew, and the representatives of the carriers, after further discussion, referred the matter to the following committee of Atlanta Terminal lines, with request that said committee meet and give consideration to the matter of the practicability of establishing a differential rate on commodities and classed C. D. & F. in L. C. L. lots; such differential to be reached by placing L. C. L. shipments in a higher class than car load shipments.'

The sub-committee appointed met on Thursday, March 26th, in the rooms of the Southeastern Freight Association, Atlanta, the representatives being:

Ga. R. R., Mr. A. G. Jackson, G. F. A.
Sou. R. R., Mr. T. C. Powell, V. P.
W. & A. R. R. *R.*, Mr. H. F. Smith, T. M. & V. P.
S. A. L. R. R. *R.*, Mr. S. Sevier, V. P.
C. of Ga. R. R. *R.*, Mr. W. A. Winburn, 2nd V. P., C. T. Airy, F. T. M.
A. & W. P. R. R., E. T. Eckols, G. F. A.
A. B. & A. R. R. *R.*, J. J. Campion, G. F. A.
L. & N. R. R. *R.*, A. R. Smith, 3rd V. P.

53 The question placed before the sub-committee was discussed in its several phases, resulting in the unanimous adoption of the following recommendations to the general committee:

'Recommended': that from the Ohio and Mississippi River crossings, and points basing thereon, to southeastern common and basing points, the existing Class D rates to be continued as rates applicable on grain, flour, meal grits, hominy, bran, mill feed and malt, C. L., 30,000 lbs. minimum.

That rates on these mill products in bbls., C. L., 30,000 lbs. minimum, per bbl., be made double class D rates.

That the present class C rates be continued as applying on these articles in sacks, L. C. L.

That the rates on said articles in bbls., per bbl., L. C. L., be made double Class C rates.

That the commodity rate existing on flour, in sacks, any quantity, be withdrawn.

The sub-committee also made the following recommendations to the joint conference:

'Recommended,' further:

That the committee propose consideration by the conference committee of all advances in rates on classes C & D to the South-east, and basing points to that in effect on Jan. 1st, 1905, or to
54 that basis in some modified form.'

Respectifully submitted.

A. R. SMITH, *Chairman.*

Copies to Messrs.
A. G. Jackson, Ga. R. R., Augusta.
T. C. Powell, V. P., Sou. Ry., Cincinnati, Ohio.
H. T. Smith, V. P., W. & A. R. R., Nashville, Tenn.
L. Sevier, V. P., S. A. L., Norfolk, Va.
W. A. Winburn, 2nd V. *P.*, C. of Ga. R. R. *R.*, Savannah, Ga.
E. T. Eckols, G. F. A., A. & W. P. R. R. *R.*, Montgomery, Ala.
J. J. Campion, G. F. A., A. B. & A. R. R., Atlanta, Ga.
Copy."

Mr. Watkins: Among other letters in that file, did you find a letter from J. M. Culp, Vice President, addressed to Mr. Greene, dated July 7, 1908?

Mr. Moore: I did.

Mr. Watkins: Is the letter you have, and which will be handed to the stenographer, a correct copy of the original letter filed in that case?

Mr. Moore: It is.

55 Mr. Watkins: Among other letters in that file was there one from the Mountain City Milling Company, of Chattanooga, Tennessee, dated August 17, 1908, addressed to Mr. G. R. Browder, A. F. T. M., Atlanta, Georgia?

Mr. Moore: This is a correct copy of that letter (indicating).

Mr. Watkins: We desire that these letters may go into the record. They are not very long, and they go right to the gist of the very question.

The papers referred to are in the words and figures following:

"WASHINGTON, D. C., *July 7th*, 1908.

Mr. GREENE:

Yours of the 4th, file 456-A.

I am convinced that a differential on C. L. or L. C. L. shipments of grain or its products is impracticable, and that we are not going to be able to accomplish it.

We certainly are not prepared to advise that our shipments in the past have been unfair and unreasonable, and I, therefore, am
56 about to take the position that, if the jobbers in the south want to take before the commission the question of C. L. and L. C. L. rates, we had just as well let it take that course as for us to undertake to bring it about.

If jobbers should undertake it I have no doubt that there will be

numbers of retail dealers who will intervene and testify that our present adjustment ought not to be changed.

The more I consider this matter and see the difficulties that are going to confront the railroads if they attempt to force this adjustment even if all the lines should be willing to subscribe, the more I see complications ahead of us. I found some of the difficulties in a recent interview I had with Mr. Moore in Atlanta. As I now view it, we had better let the Interstate Commerce Commission determine whether there should be a differential, and if it is decided that a differential shall be made, and that it must be made by reduction in present rates on C. L. shipments, then I think we ought to get an injunction against the decision and endeavor to prevent its enforcement. Really I do not think we can undertake to advance the L. C. L. rates.

J. M. CULP, *V. P.*"

57 "CHATTANOOGA, TENN., 8/17/08.

Mr. G. R. Browder, A. F. T. M., Atlanta, Ga.

DEAR SIR: Our attention has just been directed to the fact that the recent advance in rates from Ohio River points to all Southeastern Territories so far as we have been able to see applies everywhere except to Nashville. The rates there for the Ohio River remain unchanged, and in our opinion this is an unjust discrimination. Suppose for instance we wanted to sell stuff on the Western & Atlantic road between here and Atlanta in competition with the Nashville mills. The Nashville man gets his grain in to Nashville from the Ohio River for 10 cents per hundred. He can fill the bill on this grain using the local rate out to the W. & A. Station of 17 cents making a total of the two locals of 27 cents. Now we should have to pay from the Ohio River to Chattanooga 21 cents with local added from Chattanooga of 11 cents making a total of our two locals 32 cents, so you see that we are at a disadvantage of just 5 cents per hundred.

Figuring on a basis of combination of the two locals we think you will find there are a great many points that will show us to be at a
58 disadvantage. Why it is, Mr. Browder, that Nashville was made an exception to this advance? And why should not this be reported to the Interstate Commerce Commission as a fit subject for investigation? As we have stated to you before we are giving you at least 90% of our business and we think that we have a perfect right to call on you to protect our interests, and this is just one of the advantages that Nashville enjoys over Chattanooga.

When you have investigated this please let us hear from you with suggestions in the matter.

Yours truly, MOUNTAIN CITY MILL CO."

Mr. Watkins: Mr. Moore, what position does Mr. Browder hold?

Mr. Moore: He is Assistant Freight Traffic Manager of the Southern Railway, at Atlanta, Ga.

Mr. Watkins: What is the position of Mr. Greene, to whom that letter was addressed?

Mr. Moore: He is Freight Traffic Manager of the Southern Railway.

Examiner Drayton: I would like to get fixed a little more
59 exactly in my own mind that re-shipping at Nashville. As I understand you, you have to use your expense bills within six months?

Mr. Moore: Yes sir.

Examiner Drayton: And the identity of the grain is not preserved at all, then; is it?

Mr. Moore: I understand not.

Examiner Drayton: But you have to make many of your shipments out within ten days?

Mr. Moore: They receive free storage from the elevators for a period of ten days. After ten days, the elevator and the shipper agree as to the amount of storage.

Examiner Drayton: Is there any profit in this ¾ cent allowance for sacking and elevation, to the elevator company, or is that simply to cover the actual cost of performing that service?

Mr. Moore: I am not familiar with that. I think that probably some of the dealers who handle grain could testify in that regard.

Examiner Drayton: That is all.

Mr. Wimbish: I hold in my hand a copy of the rules and regulations governing the re-billing at Nashville, Louisville &
60 Nashville Railroad, N. C. & St. L., Illinois Central and Southern, which I desire to go on the record as an exhibit.

(The papers referred to are filed herewith, marked "Exhibit Moore No. 7.")

Examiner Drayton: You wish to file them all as one exhibit?

Mr. Wimbish: Yes sir.

Mr. Watkins: We have finished with the witness.

Mr. Baxter: We have no questions on cross examination.

A. P. Morgan, was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Mr. Wimbish: Give your name to the stenographer, please.

Mr. Morgan: A. P. Morgan.

Mr. Wimbish: Where do you reside, and what is your business?

Mr. Morgan: I reside in Atlanta, Georgia, I am in the jobbing and grain business—grain and flour.

Mr. Wimbish: How long have you been engaged in the grain and flour business in Atlanta?

Mr. Morgan: I have been in the jobbing business about
61 twenty-five years. I was in retail business about five years before that—about thirty years all together.

Mr. Wimbish: How do you receive your shipments inbound; in carlots or less than carlots?

Mr. Morgan: Altogether carlots.

Mr. Wimbish: Will you approximate the volume of your business, by stating the number of cars that you handle annually.

Mr. Morgan: About 1000 cars a year, sir.

Mr. Wimbish: That includes what, Mr. Morgan?

Mr. Morgan: That includes oats, corn, hay and flour—milled stuff.

Mr. Wimbish: About what is the freight revenue to the railroads annually on those shipments?

Mr. Morgan: It would average about eighty dollars a car freight.

Mr. Wimbish: It would be about eighty dollars a car?

Mr. Morgan: Yes sir.

Mr. Wimbish: To whom do you sell, Mr. Morgan?

Mr. Morgan: We sell to retail merchants in the different towns adjacent to Atlanta; to the retail merchants in the small towns in the Atlanta territory.

Mr. Wimbish: What is the average profit in your business on a car of grain?

62 Mr. Morgan: From six to ten dollars a car.

Mr. Wimbish: What does that include? Is that the net profit, or is it——

Mr. Morgan: The profit over what the goods cost us delivered in Atlanta, and it does not cover current expenses.

Mr. Wimbish: It is the cost of the commodity laid down in your warehouse?

Mr. Morgan: Yes sir.

Mr. Wimbish: Has Atlanta's territory been restricted since you became connected with this business?

Mr. Morgan: Very much, sir.

Mr. Wimbish: State, Mr. Morgan, how it has been restricted, and why it has been restricted.

Mr. Morgan: I don't know that I could tell you why. I would say that one-third of that territory has been cut out: that is, one-third of what we had twenty-five years ago, by the railroads making different points what they call basing points or junction points.

Mr. Wimbish: Let me see if I understand that, Mr. Morgan. To points that are designated by the carriers as common or junction points, a through rate is made from the Ohio River and points related thereto? Is that true?

63 Mr. Morgan: That is right.

Mr. Wimbish: So that when a town becomes a common or a junction point, then the through rate from the rivers to that point is less than the combination rate through Atlanta?

Mr. Morgan: Yes sir.

Mr. Wimbish: With the result that dealers in Nashville, say, can reach that point on a lower combination than Atlanta can. Is that right?

Mr. Morgan: Yes sir.

Mr. Wimbish: Did you ever have Newman, Georgia, in the territory with which you dealt?

Mr. Morgan: Yes sir.

Mr. Wimbish: How far is Newman from Atlanta?

Mr. Morgan: 39 miles.

Mr. Wimbish: Can you sell in Newman in competition with Nashville, at the same price?

Mr. Morgan: We cannot.

Mr. Wimbish: Why?

Mr. Morgan: The rate from Nashville to Newman is less than we get from Atlanta.

Mr. Wimbish: How long has that condition obtained with respect to Newman?

64 Mr. Morgan: I think about a year. I think the last time it was about a year.

Mr. Wimbish: Could you formerly sell in Griffin, Ga.?

Mr. Morgan: Yes sir.

Mr. Wimbish: Can you do so now?

Mr. Morgan: We cannot.

Mr. Wimbish: Why?

Mr. Morgan: For the same reason that applies to Newman. That same reason applies to Griffin.

Mr. Wimbish: What has been the net result of that system of creating these common or junction points in Atlanta's territory? Express, if you can, in miles around it.

Mr. Morgan: Ask the question again, please.

Mr. Wimbish: I want to know the territory surrounding Atlanta, in miles, that Atlanta can still reach on the Atlanta combination as cheaply as the point can be reached from Nashville or Louisville on the through rate?

Mr. Morgan: Such points as Newman and Griffin, or about fifty miles.

Mr. Wimbish: About fifty miles?

Mr. Morgan: Of course, that does not apply only to Newman and Griffin; but there are other points we can reach about

65 fifty miles from Atlanta.

Examiner Drayton: There is no territory to which Atlanta has an advantage over Nashville, is there?

Mr. Morgan: No sir.

Mr. Wimbish: Pursuant to that suggestion: Can Nashville deliver flour, we will say, in a single barrel in Atlanta originating from Louisville as cheaply as you can lay down a carload in Atlanta?

Mr. Morgan: The same rate.

Mr. Wimbish: So to Atlanta proper and to Macon proper and to these junction points proper, Nashville can ship in at the same rate as the dealers in these junctions points shipping in carload quantities only?

Mr. Morgan: Yes sir.

Mr. Wimbish: Now as to all points that base upon these common and junction points, what is the situation there? Take, for instance, at East Point, Palmetto and some other points that base on Macon. Can Nashville reach these points as cheaply or cheaper than the basing point itself can reach these points?

Mr. Morgan: They can reach each point cheaper than Atlanta can. I do not know whether they can reach Palmetto and

66 stations like that cheaper, but they can do so as cheaply.

Mr. Wimbish: Well, take Palmetto. If Nasville can reach

Palmetto on the same rate that Atlanta does, and Nashville gets the allowance of $3 a car elevation or sacking, and $2 switching; can you compete in Palmetto with a $5 handicap against you and in favor of Nashville?

Mr. Morgan: We cannot.

Mr. Wimbish: Would you regard five dollars as pretty nearly a fair profit.

Mr. Morgan: It is a very nice profit on a solid car of goods.

Examiner Drayton: Have you made any calculation as to what your absolute net profit would be on a carload of grain? You say your current expenses must come out of that five dollars a car.

Mr. Morgan: We deal in a great many goods that are not in carlots, you understand. We get a better profit on less than carlots than we do on carlots. It costs very little to handle a solid car of goods.

Mr. Wimbish: If Nashville has an advantage of $12 to $21 a car to Newman, Griffin, West Point, and points like that, can Atlanta compete?

Mr. Morgan: It cannot.

67 Mr. Wimbish: If you ship a car to Atlanta and then resell it at Palmetto, you would have to pay $2 switching charges at Atlanta; would you not?

Mr. Morgan: Yes sir.

Mr. Wimbish: If Nashville ships a car through Atlanta over the same roads, would it have to pay $2 switching charges?

Mr. Morgan: It would not.

Examiner Drayton: Just how does that come about?

Mr. Morgan: It goes through to Palmetto, and that is the destination of it.

Mr. Wimbish: Mr. Morgan, will you state the facts upon which you base your opinion that a differential should be allowed as between shipments of grain and flour, in carlots and less than carlots. I wish you would state that in your own way.

Mr. Morgan: My opinion is based on the fact that the transportation companies can handle solid cars of goods for very much less than they can the same amount of goods in broken lots. In handling cars of goods, the elevators load them for the railroad companies, they seal the cars, and they are sent to Atlanta and

68 other points like Atlanta, and the consignee unloads the goods, and they furnish the terminal facilities for those goods. The railroad company does not handle it, except to pull it through; whereas, if this car of goods was cut into small lots, they would have to receive it at the depot at the point of origin, check it into the cars, transport it to destination, check it out of the cars into the warehouses, and out of the warehouses on to the transfers or to the drayage companies, at a very much greater expense than if it is handled by this consignee at the point of destination.

Mr. Wimbish: You can file that statement as part of your testimony, if you like.

Examiner Drayton: Just put that in as Exhibit 1 to Mr. Morgan's testimony.

Mr. Wimbish: I would suggest that it go in as part of his testimony.

Mr. Northrop: May I see it?

Mr. Wimbish: You may see it, sir. (Handing letter to Mr. Northrop.)

What would be the result on the trade, Mr. Morgan, of the planning of a reasonable differential on flour and grain?

Mr. Morgan: What would be the result to the trade in
69 the Atlanta territory?

Mr. Wimbish: Yes; Atlanta and those other places.

Mr. Morgan: It would increase the business of this territory very much.

Mr. Wimbish: How, in what way?

Mr. Morgan: Because it would be more of a distributing point for this territory, for people who draw their small lots from Nashville would draw them from Macon and Atlanta.

Mr. Wimbish: What I want to get at is: Would it come more nearly equalizing Atlanta and Macon and Nashville, with respect to Georgia territory?

Mr. Morgan: It would.

Mr. Wimbish: As I understand you then, the effect would be, to the extent to which it operated, to make Macon, Augusta, Athens and Atlanta the distributing points for their respective territories, rather than Nashville?

Mr. Morgan: That is true.

Mr. Wimbish: It would more nearly equalize the handicap that Nashville now has?

Mr. Morgan: Yes sir.

Mr. Wimbish: Does Nashville sell in that territory now, under existing conditions?

Mr. Morgan: Yes sir.

70 Mr. Wimbish: Do they solicit business in and around Atlanta and Macon?

Mr. Morgan: They do it by making quotations in Atlanta and Atlanta territory. Our traveling men find quotations from Nashville almost every day in every town.

Mr. Wimbish: Take the class that I might call large consumers, like stock yards and buyers of that kind. Are they able to buy more cheaply in Nashville, and do they buy more in Nashville?

Mr. Morgan: They buy in Nashville as cheaply as we can buy, or as cheaply as anybody in Atlanta, Macon or Augusta can buy.

Mr. Wimbish: Mr. Morgan, will you state any other facts that you think are pertinent to this inquiry with which you are very familiar?

Mr. Morgan: I don't know that I can call attention to any other fact.

Mr. Wimbish: Have you any objection to that letter going in as a part of the testimony?

Mr. Baxter: Let it be copied in the record.

The letter referred to is in the words and figures following:

71 "A. P. Morgan Grain Company.

ATLANTA, GA., *August 7th*, '08.

Col. W. A. Winbish, Atlanta, Ga.

DEAR SIR: You will note from our letter head that we handle only Grain, Grain Products, Hay and bi-cotton products. We receive all of our stuff in car loads. Now we shall give our reasons for believing that we are entitled to a differential, car load and less than car loads:

"(Car load shipments handled by shipper and consignee. Less car lots more expensive to railroads. Discrimination results in car load shipments costing shipper and buyer more to transport.)

"First. The railroads do not have to check the goods in at point of shipment. Neither do they check the goods out at destination, on this class of goods when shipped in car loads. Cars are loaded and sealed by shipper. Consignee breaks the seals and unloads and furnishes terminal facilities for all goods handled in this way, whereas when shipped in smaller lots the railroads are re-
72 quried to check the goods into their warehouses or depot, and then into the cars; are shipped under railroad seals and transferred to destination, checked out of the cars into the railroad warehouse or depot and then checked out to consignee. Therefore we claim a great saving to the railroads in time, labor, material, etc., on car loads, making it more expensive to the railroads to handle less than car loads than car loads, and when they charge the same rate of freight per 100 pounds, they are forcing the carload shipper and receiver to bear a part of the extra expense and loss, to share in the expense of terminals at shipping point and destination, thus placing a burden on car load handlers who have already relieved the railroads on this score by reason of expensive warehouses, elevators and plants which they are forced to maintain.

"(Railroads recognize car load and less than car load rates on our products in this territory. Bulk grain car loads sacked grain any quantity.)

"Second. Other points and territory similar to Atlanta, that draw their goods from Ohio River points are allowed differential in favor of car load shipments. See marked copy of Southeastern Tariff No. 2 and Carolina Tariff No. 1 herewith. We also note that
73 grain shipped in bulk, the railroad claim to have a minimum of 40,000 lbs. to the car. When sacked, they will ship a small lot of the same grain at the same rate that they require for the full car of bulk grain. The small lots are often transferred several times enroute, while the bulk grain reaches its destination in the same car, which is also a great saving to the railroad companies.

"(Comparison as to cost in handling car loads and less, shows clearly that Railroads actually handle small quantities at less cost, and that shippers and receivers of car lots pay more freight, when the published rates per hundred pounds are any quantity. Extra cost to railroads in handling, in billing, in auditing and accounting. And in extra claims, etc.)

"Let us say, for instance, that I buy a car of 200 bbls. flour which

is loaded by the mill from whom I buy, out of their warehouse into a car by their own employés and expense, it is transported to Atlanta under the Mill Seals and placed on our track. We break the seals furnished our warehouse and labor and bear all the terminal expense of handling. The railroad companies are not responsible for shortages, or for errors of loading or unloading clerks: Our neighbor will buy 200 bbls. of flour and will ship it in five barrel lots,
74 mak- forty shipments, each one has to be checked into the depot at point of shipment, transferred enroute several times before reaching destination, the railroad is responsible for shortages, for loss and damage and for errors in loading and transfer clerks. The same rate per hundred pounds is charged by the railroads. The cost to the railroads on the less than car lots is forty times as much from a clerical standpoint, than on the car load shipment. Separate way-bill has to be made for each shipment. Separate freight bill made for each shipment; separate check at destination on each less than car load shipment (no check on car loads); checked and rechecked by Auditors and Accountants, and then checked out to consignee when delivered. The handling and rehandling of less than carload shipments subjects them to damage and loss, shortages, delays, etc., which throws additional work on the railroads through their General Claim Departments. All of this is a great discrimination against the car load shipment. You can apply the same illustration to all grain and grain products.

Yours truly,

A. P. MORGAN GRAIN CO.,
Per A. P. MORGAN."

75 Mr. Watkins: Mr. Wimbish asked you if these large consumers in Atlanta could buy ten sacks of grain as cheaply as you can buy a carload. Can they not do so?

Mr. Morgan: Yes sir.

Mr. Watkins: So that these large consumers can buy at retail as cheaply as you can buy at wholesale?

Mr. Morgan: Yes sir.

Examiner Drayton: Mr. Morgan, how long has this re-billing been in effect at Nashville and working against you?

Mr. Morgan: I really do not know. It was in effect, I presume, when I started in business.

Examiner Drayton: It has been in effect the time that you have been in business?

Mr. Morgan: That is my opinion, sir.

Examiner Drayton: Have you ever done a larger trade in the surrounding territory than you do now?

Mr. Morgan: Oh, yes sir.

Examiner Drayton: How is that, when the same disadvantage was operating against you?

Mr. Morgan: The railroads have been giving rates at different main points in Atlanta territory, making junction points out
76 of them, and that shuts Atlanta out of the business at those points.

Examiner Drayton: It is more recently that they have been doing that?

Mr. Morgan: For the last fifteen years.

Examiner Drayton: When did you do a larger business; how long ago was it that you did a larger business in the surrounding territory than you do now?

Mr. Morgan: Well, up to a year ago we did a very much larger business. We could reach those points up to a year ago—up to last October a year ago, and did quite a little business in those towns.

Examiner Drayton: Just what has affected your ability to reach those points?

Mr. Morgan: It is the through rate made from Nashville and the Ohio River to those points.

Examiner Drayton: You say those through rates have been in effect for the last fifteen years?

Mr. Morgan: No sir. I say that the rate affecting those points was put in effect last October a year ago.

Cross-examination:

Mr. Northrop: Referring to this junction point at Atlanta, do you mean that Griffin is placed now on the same basis as Atlanta,
77 as far as rates are concerned?

Mr. Morgan: No sir; Griffin is based on Macon.

Mr. Northrop: I do not mean it would take the same rate as Atlanta. It is made a junction point, and it has a through rate just like Atlanta has. Is that right?

Mr. Morgan: Yes sir.

Mr. Northrop: And Newnan is also a town that you would call a junction point?

Mr. Morgan: Yes sir; that is my opinion.

Mr. Northrop: And for the last fifteen years a number of other points in Georgia have been called junction points?

Mr. Morgan: Yes sir.

Mr. Northrop: Have some of those points been made by order of the Interstate Commerce Commission?

Mr. Morgan: I am not prepared to answer that question.

Examiner Drayton: Do you think that the fact that they have been made junction points in connection with this re-billing privilege at Nashville gives to Nashville more of an advantage than Atlanta enjoys in getting into those points?

Mr. Morgan: Certainly.

Mr. Baxter: Do you know why Griffin is made a junction point?

78 Mr. Morgan: I do not know that I do, sir.

Mr. Baxter: How many of these additional junction points have been made in the last year?

Mr. Morgan: I am not familiar with them all.

Mr. Baxter: Name as many as you can.

Mr. Morgan: We used to ship Elberton, Georgia, some goods. I do not believe that rate has been put into Covington. I do not believe I could call to memory any others, except those I have named.

Mr. Lea: Was it making a junction point that prevented Atlanta from shipping into Richmond as cheaply as Nashville, or was it the re-billing privilege in Nashville?

Mr. Morgan: I suppose the re-billing at Nashville.

Mr. Lea: This re-billing has been in Nashville for fifteen years, according to your statement, has it not?

Mr. Morgan: Yes; that is true.

Mr. Lea: And you were able to ship into Griffin until a year ago?

Mr. Morgan: We had been into Griffin up to about a year ago; yes sir.

Mr. Lea: At which time, Griffin was made a junction point?

Mr. Morgan: Yes sir.

79 Redirect examination:

Mr. Wimbish: I will ask you how it was that you were able to sell in Griffin before it became a junction point, with the disadvantage against you of Nashville having this elevation charge and this privilege of bringing in grain in bulk. Was it because you were contented with a smaller profit on better terms, or why was it that you were able to overcome that handicap?

Mr. Morgan: Well, a shrinkage of handling charges amounts to about three dollars, and we were able to meet that large competition for a pretty long time; but when this rate was put into Griffin, it made a difference of about eight or ten dollars, or six dollars, which we could not overcome.

Mr. Wimbish: Twelve dollars a car?

Mr. Morgan: Yes; a three dollar elevator charge, and their trackage in Atlanta would make about twelve dollars.

Mr. Wimbish: In other words, you were competing with a three dollar rate and now with a fifteen dollar rate?

Mr. Morgan: Yes sir.

Mr. Wimbish: And that is more than your profit?

Mr. Morgan: Yes sir; decidedly so.

Mr. Watkins: Do you sack any grain at Atlanta?

80 Mr. Morgan: Yes sir.

Mr. Watkins: Do they pay you three-fourths of a cent per hundred pounds for sacking?

Mr. Morgan: Yes sir.

Recross-examination:

Mr. Baxter: Do you know whether the railroads pay the merchants of Nashville any charge for re-sacking?

Mr. Morgan: I think the rules laid down cover that.

Mr. Baxter: Well, do you know? I am asking you do you know, as a matter of fact?

Mr. Morgan: I do not.

Mr. Lea: What are your sacking facilities; how much grain can you sack?

Mr. Morgan: I sack three or four cars a day. I have no elevator or sacking machine.

Mr. Lea: How many sacking plants are there in Atlanta?

Mr. Morgan: Two, I believe.

Mr. Lea: Whose are they?

Mr. Morgan: J. D. Fraxier & Company, and W. S. Duncan & Company.

81 (The Commission, thereupon, at twelve o'clock, noon, took a recess until two o'clock p. m.)

82 After Recess.

The hearing was resumed at the expiration of the recess. Whereupon—

A. P. MORGAN resumed the stand for further direct examination.

Mr. Wimbish: Mr. Morgan, I will ask you to state, very briefly, if you will, the elements that enter into the difference in cost between shipments in carloads and less than carloads. Let us illustrate it in this way. Suppose at Nashville a man buys a carload of flour and we will say that he breaks the car at Nashville into forty different consignments to various Southeastern destinations. You buy a car at Louisville and ship it to Atlanta, and then you re-sell and send it to forty different destinations. I would be glad if you would tell the Examiner the difference in cost to the railroad companies of those two movements.

Mr. Morgan: Well, they would get the re-billing privileges on all of the forty different shipments, where I would have to pay the locals on the forty different shipments.

Mr. Wimbish: What is the difference in cost between a shipment in carload and that carload broken up into forty different shipments?

83 Mr. Morgan: Do you mean to Nashville?

Mr. Wimbish: Anywhere. What is the difference in the clerical labor to the railroad companies?

Mr. Morgan: I could only estimate that.

Mr. Wimbish: Well, would it be forty times as much?

Mr. Morgan: Nominally so, yes sir.

Mr. Wimbish: What would be the difference as to loading and unloading?

Mr. Morgan: As the consignor loads the stuff, and I would unload it, it would be forty times as much——

Mr. Wimbish: You mean loading and unloading?

Mr. Morgan: Yes sir.

Mr. Wimbish: What would be the difference, if any, not with respect to any particular shipment, but on the whole of that character of shipments, as to loss and breakage claims?

Mr. Morgan: On the smaller shipments it would be very greatly increased. The loss and damage claims would be increased very much over the carload shipments. We seldom have a claim on a car where the equipment is in good condition, unless they are transferred. If the cars are transferred, sometimes there is a loss in that way. That is the only way, and seldom that way.

84 Mr. Wimbish: You mean where the contents are transferred?

Mr. Morgan: Yes sir.

Mr. Wimbish: But if they ship a solid car from Louisville to Atlanta, and if it comes with proper equipment on the part of the railroad company, is there any loss or damage on that at all?

Mr. Morgan: No sir.

Mr. Wimbish: Could there be any loss or damage unless resulting from a leaky roof or defective equipment or something like that?

Mr. Morgan: I do not think it would be possible.

Mr. Wimbish: What would be the damage or loss in package shipments, less than carload?

Mr. Morgan: In transferring, it is unloaded so many more times in transportation. It is handled twice or three times where it is taken on to the road from the original point of shipment, and if it is transferred at any point along the line that adds another handling or two. Then, when it reaches its destination, it is handled three or four times, and all of that increases the liability very much.

Mr. Wimbish: Would it be exposed to deterioration by being put in a car with other commodities that might affect its value?

85 Mr. Morgan: Yes; it is often put in cars that have still or had some elements of merchandise that are not good for flour or grain, particularly if the previous merchandise loaded in the car was possessed of an odor, the flour or grain would partake of that odor.

Mr. Wimbish: If you buy a car and ship the contents of that car in forty different consignments, you pay a higher local rate, do you not, from Atlanta?

Mr. Morgan: Oh, yes, I have to pay a local rate.

Mr. Wimbish: So you pay a rate which is intended to cover these risks?

Mr. Morgan: Yes sir.

Mr. Wimbish: And costs?

Mr. Morgan: Yes sir.

Mr. Wimbish: But the Nashville merchant, in rebilling, does not assume any of that, does he?

Mr. Morgan: None whatever.

Mr. Wimbish: That is all.

86 W. E. Small was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Mr. Wimbish: Where do you reside, Mr. Small?

Mr. Small: In Macon, Ga.

Mr. Wimbish: What is your business?

Mr. Small: I am General Manager of the A. B. Small Company.

Mr. Wimbish: What is their business

Mr. Small: Wholesale grocers.

Mr. Wimbish: Do you deal in flour, grain and grain products as well as hay?

Mr. Small: I do.

Mr. Wimbish: Mr. Small, will you state what effect the rebilling at Nashville, together with the privilege of shipping at the any quantity rate, has on Macon proper, and on the surrounding towns, that I might say would be in Macon's normal territory in the matter of rates?

Mr. Small: The rebilling privilege at Nashville?

Mr. Wimbish: And the any quantity rate. In other words, can Nashville deliver ten sacks of flour in Macon proper as cheaply as you can deliver a carload, both shipments originating at
87 Louisville?

Mr. Small: Yes sir.

Mr. Wimbish: Well, now, what is the difference, if any, that Nashville would enjoy in delivering ten sacks of flour to Milledgeville, rebilled from Louisville as against your delivering ten sacks on a carload originating in Louisville and reshipped by you at Macon?

Mr. Small: Nashville would enjoy the benefits accruing from the differential existing between the through rate from the point of origin to Milledgeville as against the through rate from Nashville, plus the local rate from Macon to Milledgeville.

Mr. Wimbish: What is that in cents per hundred pounds?

Mr. Small: 8½ cents on Class C, I think.

Mr. Wimbish: Do you mean that Nashville would get into Milledgeville at 8½ cents per hundred pounds less than Macon?

Mr. Small: She will get into Milledgeville 8½ cents cheaper, less 3 cents per hundred pounds, which Milledgeville pays over and above Macon, in other words, 5½ cents net.

Mr. Wimbish: That Nashville can deliver in Milledgeville?

Mr. Small: Yes sir.

88 Mr. Wimbish: On the rebilling from Louisville or Ohio River?

Mr. Small: Yes sir.

Mr. Wimbish: 5½ cents per hundred pounds cheaper than you can deliver in Milledgeville on the Macon rate?

Mr. Small: That is correct.

Mr. Wimbish: Is that true relative to other junction points in the vicinity of Macon?

Mr. Small: It is.

Mr. Wimbish: What is the effect on the local stations, not junction points or basing on Macon? Is it the same as that brought out this morning with regard to Atlanta?

Mr. Small: Exactly; yes sir.

Mr. Wimbish: Is there any difference in that situation between Macon and Atlanta?

Mr. Small: What is relatively true of Atlanta is true of Macon. The same differentials exist.

Mr. Wimbish: Will you state the reasons why you think a differential should be allowed, and the facts upon which you base those reasons, in your own language?

Mr. Small: From the carriers' viewpoint, a differential should

be allowed, and from an economical viewpoint. From
89 the viewpoint of the shipper and distributor at the point removed from Nashville, a differential should be allowed, in order that there should not be any discrimination in favor of Nashville. In other words, what Nashville can do for Macon, Georgia, Macon, Georgia, would like to be permitted to do for Nashville, but under the present regime, we are not permitted to do that. Furthermore, the larger interior distributing points in the Southeast should be accorded the same privileges for distributing their products that other points in the United States are accorded.

Mr. Wimbish: Mr. Small, this rebilling at Nashville has been continued for a good many years. How is it that you have been able to maintain your trade at Macon, in the face of that which seems to us to be unfair competition?

Mr. Small: How have I been able to maintain my business in Macon?

Mr. Wimbish: Exactly.

Mr. Small: I have been able to maintain that trade only to an extent. I have really suffered on account of the privileges which have been afforded Nashville that have not been afforded us. The population, however, adjacent to Macon, has increased to an
90 extent, which, in a measure, permits me to buy in quantities approaching the maximum, and thereby get rid of the large quantities which I would be permitted to buy, in a measure, if this increased population had not existed. On the other hand, if I was not permitted to distribute through the increased population, I would find myself restricted in my purchasing ability. In other words, my purchasing power would have been taken away from me, and it would all have accrued to Nashville.

Mr. Wimbish: Has the fact that you have been able to make prompter deliveries due to your nearer location to your customers, and, to some extent, to the congestion in railway movement that existed some years ago—has that been a factor in enabling you to explain the local demand?

Mr. Small: That has assisted us a great deal.

Mr. Wimbish: Does the fact that your customers know that you can give them terms and things of that kind cut any figure?

Mr. Small: Oh, yes. The credit that we are able to extend to patrons nearby, or to patrons somewhat removed, has something to do with our distributing ability.

Mr. Wimbish: Has Nashville become more aggressive in late years in circularizing your territory?

Mr. Small: They have.

91 Mr. Wimbish: And in making quotations to your trade?

Mr. Small: They have.

Mr. Wimbish: Has the number of points that you formerly could sell to been made junction points in late years?

Mr. Small: Yes sir.

Mr. Wimbish: What is the net effect of all those causes on your trade?

Mr. Small: The net effect of all those causes is simply this: That

we find ourselves year by year more closely restricted in territory adjacent to Macon, which we could easily fill if conditions were so adjusted that we get a bulk of the business. We are getting less territory year by year, or, I may say, month by month. This business is going to Nashville, when we could take care of it on the same economic basis as Nashville, if accorded the same privilege as Nashville.

Mr. Wimbish: Would the effect of granting a differential and the abolishing or rebuilding at Nashville be simply to increase the number of distributing centers in the Southeast; or would it have any other effect that you know of on your customers?

Mr. Small: No.

Mr. Wimbish: Except to increase your facilities for supplying them?

92 Mr. Small: Yes sir.

Cross-examination:

Mr. Baxter: Could not Ohio River crossings such as Louisville and Evansville supply that trade?

Mr. Small: If they enjoyed the same privileges as Nashville.

Mr. Baxter: Do they not have the same privileges?

Mr. Small: I do not know.

Mr. Baxter: Is not Milledgeville a jobbing center like Macon?

Mr. Small: Do you mean is it the same character——

Mr. Baxter: Is it not a jobbing point like Macon?

Mr. Small: No.

Mr. Baxter: Is it not a jobbing point?

Mr. Small: It is recognized, to some extent, as a jobbing point.

Mr. Baxter: If you were granted the privilege of reshipping grain from Macon, would you expect to ship to Atlanta or Athens or Columbus?

Mr. Small: If we had a rebilling privilege at Macon, I would expect——

93 Mr. Baxter: Would you expect to ship into Atlanta, Macon and Columbus?

Mr. Small: If the rebilling privilege permitted us to do so, I would.

Mr. Baxter: Then, do you think that if the privileges were granted to Columbus, Columbus should be permitted to ship into Macon?

Mr. Small: Yes sir.

Mr. Baxter: Then, your position in this case is that every part of that territory should be allowed to ship into every other part?

Mr. Small: In order to protect us against the discrimination in favor of Nashville, yes.

Mr. Baxter: Do you know of any privilege that Nashville enjoys that the Ohio River crossings do not enjoy?

Mr. Small: Ohio River shipping points do not necessarily enjoy rebilling privileges——

Mr. Baxter: My question is, does Nashville enjoy any other privileges than those enjoyed by the Ohio River crossings?

Mr. Small: They do.

Mr. Baxter: What are they?

94 Mr. Small: They enjoy the rebilling privilege.

Mr. Baxter: Is not that privilege enjoyed by the Ohio River Crossings?

Mr. Small: You will have to name the crossing.

Mr. Baxter: Take Evansville and Cairo, for instance—Louisville, East St. Louis, Memphis.

Mr. Small: Perhaps the answer to that could be secured from the present tariff. I really am not versed in the present current rates, and cannot answer the question. The tariff would show it.

Mr. Baxter: Then you do not know that Nashville enjoys privileges other than those enjoyed by the Ohio River crossings?

Mr. Small: Yes sir.

Mr. Baxter: What are they?

Mr. Small: I should say that Nashville has the rebilling privilege and milling in transit privilege that Ohio River crossings do not enjoy.

Mr. Baxter: Name me some of those Ohio River points that do not enjoy them. I would like to get them in writing.

Mr. Small: If I had a map I could do it. We will simply say that I do not know. Of my own knowledge, I cannot *say* answer

95 the question.

Mr. Baxter: Then, you do not know that Nashville has any privileges that are not accorded to the Ohio River Crossings?

Mr. Small: I logically—yes sir.

Mr. Baxter: Name them.

Mr. Small: I cannot.

Examiner Drayton: Do you know how the rates are constructed from the territory north and west of the Ohio River points?

Mr. Small: That is my trouble. Otherwise, I could approach a correct answer to the question.

Mr. Watkins: Have you examined the tariffs to and from the Ohio and Mississippi River points?

Mr. Small: No sir.

Examiner Drayton: You do not know whether they are made on a combination or how?

Mr. Small: No. I am not really in a position to answer that question, other than from a logical viewpoint.

Mr. Baxter: You said a while ago that Nashville enjoys a milling in transit privilege that other points do not enjoy. Name those points.

Mr. Small: Well, Nashville does not enjoy a milling in

96 transit privilege that other points do not enjoy, provided those privileges are extended to the same points.

Mr. Baxter: You said they did.

Mr. Small: I combined the two.

Mr. Baxter: Your answer would be the same to that as the former?

Mr. Small: Yes sir.

Examiner Drayton: If the rates were constructed on combination

via the Ohio River crossings, that would be the privilege of re-billing, would it not?

Mr. Small: It would.

Examiner Drayton: Do you know how they are constructed? You do not know whether they are combination rates or through rates?

Mr. Small: I only know theoretically. I do not know from my own actual observation.

Mr. Baxter: Do you think that the granting of reshipping privileges at Atlanta and Macon and the other southern interior cities would increase the total consumption of grain in the South—grain or flour?

Mr. Small: No.

Mr. Baxter: You do not?

97 Mr. Small: No.

Mr. Baxter: That is all.

Mr. Lea: I understood you to state that the denial of the reshipping privilege to Nashville would give to the section adjacent to Macon the trade that belonged to it, and which she could handle. Is that correct?

Mr. Small: Yes sir.

Mr. Lea: Would this not, in effect, limit to Macon one of the competitive supply markets adjacent to Macon which we now enjoy?

Mr. Small: No.

Mr. Lea: Why not?

Mr. Small: Because they could buy from Macon, with that adjustment, as cheaply as they are now buying and cheaper.

Mr. Lea: How could that be?

Mr. Small: On account of the economic methods of transportation that would be afforded.

Mr. Lea: Explain that, will you?

Mr. Small: I mean by that that their goods would reach them in a more perfect condition, and at the same prices from Macon, Georgia, as they would otherwise get them; whereas, if they were accorded this privilege, they would be received at a little

98 increase in price, but the condition in which the goods would be received would increase the price on account of the deterioration that they are subject to, due to transportation.

Mr. Lea: Would not the Ohio River points be in exactly the same position as they are *now* and the only difference to Nashville be eliminated?

Mr. Small: I cannot answer that question from my own knowledge.

Mr. Lea: Do the dealers and consumers within the territory adjacent to Macon pay a higher price on grain through you than through Nashville?

Mr. Small: The consumers?

Mr. Lea: The dealers and your patrons.

Mr. Small: Not necessarily, no sir. In other words, we meet Nashville competition if we are forced to.

Mr. Lea: Then the effect of taking this away from Nashville

would be to eliminate the competitive market of Nashville if you have to meet it now?

Mr. Small: I should say yes.

Mr. Lea: Could you say anything else?

99 Mr. Small: No.

Mr. Baxter: Then, I understand your position, Mr. Small, is to eliminate Nashville competition in that territory?

Mr. Small: Not necessarily, no sir.

Mr. Baxter: How could it compete?

Mr. Small: What is that?

Mr. Baxter: How could it compete?

Mr. Small: It is not Nashville competition that we want to eliminate; it is the conditions that exist at Nashville. We do not care anything about Nashville.

Mr. Baxter: No; you evidently do not. That is all.

Redirect examination:

Mr. Wimbish: What is the population of Milledgeville?

Mr. Small: I should say five thousand.

Mr. Wimbish: What is the population of Macon?

Mr. Small: We claim 65,000.

Mr. Wimbish: How does the wholesale or jobbing business in grain and flour at Milledgeville compare with that at Macon?

Mr. Small: About 1 to 100.

Mr. Wimbish: Are the Ohio River crossing cities—Louis-
100 ville, Cincinnati, Evansville, etc.—supplying this South-eastern territory, and making efforts to sell to the retail and consuming trade as Nashville is doing?

Mr. Small: No.

Mr. Wimbish: Do they deal with a different class of consumers?

Mr. Small: Yes sir.

Mr. Wimbish: Are they farther from this territory than Nashville is?

Mr. Small: Yes sir.

Mr. Wimbish: Is it your position that you want to eliminate Nashville, or that you want to put Nashville on a parity so that Nashville will not eliminate Macon?

Mr. Small: That is exactly the condition.

Recross-examination:

Mr. Baxter: Is it not a fact that Ballard & Co., of Louisville, Ky., sell direct to those jobbers?

Mr. Small: Yes sir.

Mr. Baxter: The large ones?

Mr. Small: Yes sir.

Mr. Baxter: You are mistaken, then, in saying that they
101 did not compete?

Mr. Small: Yes sir.

Mr. Baxter: Why were you?

Mr. Small: What is that?

Mr. Baxter: Why were you?

Mr. Small: They do not compete on the same basis, as I understand.

Mr. Baxter: I understood you to say that they did not undertake to solicit business.

Mr. Small: Oh, no; I said not to the extent that Nashville did. That was Mr. Wimbish's question. In other words, points farther removed from these Southeastern points were not as active in the solicitation of the trade as Nashville was, due to the other question asked me if they were farther removed from Nashville and the reasons——

Mr. Baxter: Now, as a matter of fact, do you not know that the Ohio River points—especially Ballard & Company of Louisville, and Halliday of Cairo—ship more flour into that territory than does Nashville?

Mr. Small: From my own knowledge, I could not say.

Mr. Wimbish: Just in that connection: Ballard & Co., are millers, are they not?

102 Mr. Small: I understand they are.

Mr. Wimbish: They make special brands of flour that they advertise very extensively?

Mr. Small: Yes sir.

Mr. Wimbish: They are not in the same class with the general class of dealers in Nashville, who are putting out regular grades of flour; they are selling specials?

Mr. Small: They do not enjoy any elevator privileges.

Mr. Baxter: Does not Nashville manufacture special brands of flour to supply that trade?

Mr. Small: They might, but I have never bought any of them; nor have they been offered to me.

Examiner Drayton: When you spoke of the deterioration of the shipment when it moved to Nashville, you meant that it moved in there in bulk and in less than carload; so that if moved into Macon in carload lots there would be a longer haul in bulk shipments?

Mr. Small: Yes sir.

Mr. Lea: Is that the idea?

Mr. Small: Yes sir.

Mr. Lea: How does the less than carload rate from Louisville compare with the less than carload rate from Nashville

103 down to Macon?

Mr. Small: That is another point that the tariff would have to show. I could not answer that.

Mr. Lea: Do you meet any competition from Nashville jobbers in Macon proper?

Mr. Small: In less than carload shipments?

Mr. Lea: Yes.

Mr. Small. Yes.

Mr. Lea: Is that the strongest competition you have there?

Mr. Small: That is just a portion of the competition. The competition outside of Macon is just as well emphasized as it is in Macon.

Mr. Lea: You actually meet that competition with Nashville?

Mr. Small: Yes sir.

Mr. Lea: Have you been able to know that it was from Nashville?
Mr. Small: Yes sir.
Mr. Lea: And is it stronger than from the Ohio River crossings?
Mr. Small: Yes sir.

104 Mr. Lea: How far out from Macon are you able to sell under the present adjustment; that is your area?

Mr. Small: Macon's territory proper is considered, say, the radius of fifty or sixty miles. We, of course, do not restrict ourselves to that radius. When we go further it is simply a question of shrinkage of the price of the goods we have to offer, in order to meet foreign competition. We have to bear that burden.

Mr. Lea: How far can you shrink your price to absorb the difference in freight rates and make any money at all What is the utmost limit of your territory, with which you do try to compete with Nashville?

Mr. Small: Based on the actual cost of the goods, without any appreciation in value due to any rise in the market, we would not be permitted to go further than the next junction point. The next junction point would have a rate which would enable her to sell cheaper in that territory than we could. Do you understand?

Mr. Lea: You mean that wherever you meet one of those new junction points, they can come back in your territory and sell in intermediate points?

Mr. Small: Yes sir.

105 Mr. Wimbish: Illustrate it on the Central of Georgia up to Griffin. That has recently been made a junction point.

Mr. Small: Take Griffin. Let me see—suppose we take Cordele. Cordele, Georgia, enjoys a rate of three cents from Macon; in other words, the rate from Macon to Nashville is 30 cents in carload, and less than carload 33 cents. Now, the local rate, Macon to Cordele, is 10 cents. The difference between 2 and 10 is 7. We have 7 cents there to spend in reaching Cordele territory. After we have spent that, we cannot go any further. Cordele then will command the situation.

Mr. Wimbish: That is all. Mr. Small.

E. M. Hudson was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Mr. Wimbish: Give the stenographer your name, please.
Mr. Hudson: E. M. Hudson.
Mr. Wimbish: Where do you reside?
Mr. Hudson: Atlanta, Ga.
Mr. Wimbish: What is your business?

106 Mr. Hudson: Wholesale grocery business and manufacturer.

Mr. Wimbish: What company or corporation are you connected with?

Mr. Hudson: McCord-Stewart Company.

Mr. Wimbish: Does your company handle flour or any of the products——

Mr. Hudson: Flour; yes sir.

Mr. Wimbish (continuing): —now under consideration?
Mr. Hudson: Yes sir.
Mr. Wimbish: How long have you been in the business?
Mr. Hudson: Nearly twenty years.
Mr. Wimbish: In this business?
Mr. Hudson: This company and its predecessors.
Mr. Wimbish: What other business besides handle flour does your firm do?
Mr. Hudson: Well, it handles the various lines of groceries, and we manufacture a lot of goods, and roast coffee.
Mr. Wimbish: So that the sale of flour is only one of the branches of your business?
Mr. Hudson: Yes sir.
Mr. Wimbish: What is the population of Atlanta, Mr. Hudson
107 Mr. Hudson: The last census I recollect is 89,000.
Mr. Wimbish: I am speaking of what you claim down there.
Mr. Hudson: About 150,000 now.
Mr. Wimbish: Does not the new directory give us 202,000?
Mr. Hudson: I did not notice.
Mr. Wimbish: Is Atlanta recognized as a jobbing center?
Mr. Hudson: Yes sir.
Mr. Wimbish: How does Atlanta compare with Nashville in point of population?
Mr. Hudson: I should say it is practically the same size. I do not know that there is very much difference. I do not remember Nashville's figures, but they are practically the same size.
Mr. Wimbish: You mean in 1900?
Mr. Hudson: Yes. I do not keep posted in regard to Nashville like I do with Atlanta.
Mr. Wimbish: Mr. Hudson, how was your company able to meet the Nashville competition in former years any better than you can meet it now, and why is it that this condition was permitted to remain so long without being challenged, if it was not challenged?
Mr. Hudson: We have been after it there for a long time
108 in various ways. Sometimes it would be taken up individually and then, after establishment of the Atlanta Freight Bureau a good many years ago—I do not remember now the exact time—it was brought more prominently to the attention of the railroad companies in various ways.
Mr. Wimbish: Do the railroad companies grant rebilling to Atlanta?
Mr. Hudson: A good many years ago, there was a form of rebilling there. As to the details of it, I cannot say. At that time I was not connected with the firm so as to know the details of it. I was out on the road for them.
Mr. Wimbish: But there was complaint about this adjustment, and as one of the results rebilling was put in at Atlanta?
Mr. Hudson: I am not familiar with what was put in the rebilling at Atlanta. That antedated my time.

Mr. Wimbish: Do you know anything about the Piedmont Conference in Atlanta in December, 1904?

Mr. Hudson: Yes sir.

Mr. Wimbish: Was there any complaint made at that conference to this adjustment?

Mr. Hudson: Yes sir.

109 Mr. Wimbish: With relation to Nashville?

Mr. Hudson: Yes sir.

Mr. Wimbish: Was any relief granted?

Mr. Hudson: No sir.

Mr. Wimbish: Explain, if you can, why the situation has grown more acute of late, if it has grown so?

Mr. Hudson: Well, on the general proposition that competition gets stronger in general lines of business every year. For instance, if a community has an advantage over another community, it strengthens the advantaged community and weakens the disadvantaged community; and with the advantages that they give Nashville she profits by getting more publicity for working the trade, explaining to the merchants and calling their attention to it.

Mr. Wimbish: In other words, you find it a progressive matter?

Mr. Hudson: Yes; it is naturally supposed to be. If the dealers in Nashville have an advantage, they are going to work it. It is naturally supposed they would.

Mr. Wimbish: If a differential should be allowed, what would be the effect on the Atlanta jobber, and what would be the effect

110 on the consumer—and by the consumer, I mean the individual consumer, the man who buys the flour to be baked into bread for his family? I wish you would explain that very fully?

Mr. Hudson: Well, now, as to the effect that it would have on the Atlanta jobber—it would remove an unnatural competitor, and would allow the local business that naturally belongs to him to be handled by him; and as to the difference to the consumer——

Mr. Wimbish: Before you proceed with that, one moment.

Mr. Hudson: Yes sir.

Mr. Wimbish: If the present rating should be taken as a carload rating, and a differential over that be allowed for shipments in less than carload lots, Nashville could still ship into Atlanta in carloads as cheaply as Atlanta could; could she not?

Mr. Hudson: Yes sir.

Mr. Wimbish: And she could distribute from there on terms of perfect equality with the Atlanta dealer?

Mr. Hudson: Yes sir.

Mr. Wimbish: Now go ahead.

Mr. Hudson: I cannot see that there would be any difference to the consumer.

111 Mr. Wimbish: Why not?

Mr. Hudson: The only difference I could see would be to shift the point of distribution of the commodity; that is the only difference I can see. There is a certain amounts of profit that is not fixed in any market, and it is not fixed at any season of the year.

that an article is compelled to carry for the business to go on; and it is not necessary that that profit should be more in Atlanta than in Chicago or Nashville or Charleston, or any other place. Atlanta, I will say, has the capital and the ability and the facilities for taking care of that local consumption, if this unnatural competitor was taken away or removed.

Mr. Wimbish: The differential of five cents per hundred pounds would amount to ten cents per barrel?

Mr. Hudson: Practically so; yes sir.

Mr. Wimbish: If you could increase your area and volume of distribution so that you could do a larger business, would you, in that way, reduce the expense of doing that business?

Mr. Hudson: Well, that is generally recognized, that the larger the volume of business the smaller the per cent of expense that you operate under.

Mr. Wimbish: If that condition should come about, could
112 you and would you, as a progressive, active dealer in these things, sell to your retail trade at the same price as now?

Mr. Hudson: I could, and if I would not, the chances are that some other fellow equally situated to me would do so, if I was not disposed to do it.

Mr. Wimbish: In other words, the competition there would keep prices down?

Mr. Hudson: Yes sir.

Mr. Wimbish: Now, when we come to the individual consumer, would that differential of ten cents per barrel, under those conditions I have enumerated, increase the cost of flour a penny?

Mr. Hudson: I cannot say that it would. I could not understand that it would be necessary to mean any increase to him.

Mr. Wimbish: Would the result be that Atlanta would supply more advantageously, and with greater facility, and with fresher goods, at the same price, that territory?

Mr. Hudson: Yes. Atlanta could supply, and would be amply able to take care of the increased business that would come into her hands, and by having that increased business it would give
113 her the advantage that she could buy in larger quantities.

Mr. Wimbish: There is a class of consumers like the Farmers' Union, stock yards, livery stables, etc., that buy in carload lots. This adjustment that we are asking for would not at all affect their ability to continue to buy in Nashville or the Ohio River markets, as they are doing now?

Mr. Hudson: No.

Mr. Wimbish: If you know of any other good reason, in addition to the excellent ones you have given, why this differential should be allowed or re-billing abolished, I wish you would state it to the Examiner.

Mr. Hudson: Well, commercially speaking, an individual or a community cannot well rest satisfied, knowing that another party is enjoying privileges that they cannot enjoy, and can by those enjoyments get business that takes business away from them that naturally belongs to them. So far as Nashville is concerned, I have no

fight to make on them, and no objection to their getting all the business they can; and I do not ask any advantage of Nashville, so far as I am concerned. If they will give me the same advantage that Nashville has, and if I cannot then take care of myself, I am
114 willing to drop out; but when a thing exists that has the power to place another fellow at an advantage over me, it is natural to suppose that I will not be satisfied and will kick about it. Now, the testimony that is brought out here—Nashville is handling stuff——

Examiner Drayton: That is going a little beyond the testimony. I think you are indulging in a pretty good argument, but we want to get the facts here, if we can.

Mr. Wimbish: I do not suppose I can do quite as well as the witness, but I recognize that that is not proper just now.

Examiner Drayton: Where does most of your grain come from—flour?

Mr. Hudson: Principally in the West, beyond the river—practically altogether.

Examiner Drayton: From what States—Minnesota, etc.?

Mr. Hudson: Missouri, in certain years: Colorado and Nebraska.

Examiner Drayton: This flour is manufactured out there?

Mr. Hudson: Yes sir.

Examiner Drayton: Is there any other gateway than the Ohio River gateways in shipping this product to Atlanta?

115 Mr. Hudson: Well, the Mississippi gateway, I suppose you would call it—that and Memphis.

Examiner Drayton: You know where grain is handled from Western points, do you not; that is, the general line over which it is moved? That has also the Mississippi River gateway to Atlanta?

Mr. Hudson: Yes sir.

Examiner Drayton: Is there any product involved in this complaint, that you know of, which moved into Atlanta via some other gateway than the Ohio River and Mississippi River gateways, at a lower rate than Nashville has?

Mr. Hudson: None, except——

Examiner Drayton: That is, grain from Oklahoma, for instance. How would that move?

Mr. Hudson: I do not know anything about that.

Mr. Watkins: I want to ask just one question. If the special privileges which the railroad has granted at Nashville were taken away from them and not given at Atlanta and other cities, would that eliminate Nashville, or would it merely equalize Nashville and Atlanta in the competition for business?

Mr. Hudson: Well, it would eliminate——

116 Mr. Watkins: If Nashville and Atlanta were put on the same basis, would that eliminate Nashville as a competitor, or would it merely equalize it with you?

Mr. Hudson: It would not eliminate Nashville, but it would put us on the same basis with them; but they would still have this advantage—I assume this—Nashville would have all the territory from Atlanta back to Nashville to operate in, that we would not get back

into at all. They would have all that territory to operate in before we get to Atlanta. Then the equality would apply only from Atlanta south.

Mr. Watkins: If these privileges were taken away from Nashville, Nashville could compete on even terms with Atlanta in Atlanta and south, and would have an advantage to points north of Atlanta?

Mr. Hudson: Yes sir; the rebilling.

Mr. Watkins: If the rebilling and these special privileges were taken away from Nashville, Nashville might still compete on an even basis, but would not have any advantage?

Mr. Hudson: They could, with the exception that if the differential were established, Nashville would be eliminated on business less than carload.

Mr. Watkins: Less than carload?

117 Mr. Hudson: Yes sir.

Mr. Watkins: Then you are not speaking to eliminate Nashville, but merely seeking to equalize the situation?

Mr. Hudson: Oh, yes; that is it.

Examiner Drayton: In other words, Mr. Hudson, Nashville has the advantage over Nashville properly on a movement that is beyond Nashville, moving in its natural course to ultimate destination.

Mr. Hudson: Yes sir. Now, Colonel Wimbish, go right back there: I am not a lawyer, and I do not know when I am getting off the line. If I understand the situation as to flour in Nashville, they can buy a carload of flour or a thousand or ten thousand barrels of flour from the same mill in the West that we do. They will work the same trade that we do, and ship out in five or ten barrel lots; and those five or ten barrel lots, we will say, go into points in Atlanta's territory on the Atlanta & West Point Railroad, the Central Railroad and the Southern. Now, the railroad company, as I understand it, gives them an entire sidetrack at Nashville, and they load a car on that. If they do not handle that flour, the railroad company takes it and carries it to some distributing point and

118 distributes it to the different roads that *that* carry it to these destination points. When I am competing with that, they do not place that empty at our track. We have to maintain a lot of drays to haul it to their local depot, which is an additional expense to us, or it is a favor that they enjoy which we do not enjoy. If I am not correct, about that, I would like to be informed.

Cross-examination:

Mr. Baxter: You spoke of the purchase of this grain by the livery stable, that they usually buy it in carload quantities.

Mr. Hudson: I cannot give you any positive information about the grain. We do not handle grain, but I believe my reply to Colonel Wimbish's question was, if we could remove them as buyers in carload lots?

Mr. Baxter: Except in carload lots.

Mr. Hudson: No sir. His question was, the people who are now buying in carload lots, if these things were removed from Nashville, would it prevent them from continuing to buy in carload lots at the

same rate, and I told him that I did not say that they could continue to buy in that way.

119 Mr. Baxter: If this differential were applied, would it not have the effect of depriving all consumers and dealers who purchase in less than carload lots from being able to compete with purchasers of this material which is purchased in carload lots in Atlanta and other points in that territory?

Mr. Hudson: I do not know that I am prepared to say that a man who can now buy in five barrel lots can compete with another dealer who buys in carloads.

Mr. Baxter: You have an any quantity rate out of Atlanta to your territory?

Mr. Hudson: Yes sir.

Mr. Baxter: And you want a differential established on this interstate business? Anybody outside of Georgia who undertakes to do any business in Georgia must pay a differential which would, in effect, prohibit that competing firm from that business in Georgia. Is that your position? Would not that be the result?

Mr. Hudson: Yes sir.

Mr. Baxter: In other words, you undertake to concentrate in Atlanta all the business in Georgia, by the establishment of this differential?

Mr. Hudson: Yes sir.

120 Mr. Baxter: That is all.

Mr. Hudson: I take the position that a man who is several hundred miles away from the point of consumption is not entitled to enjoy the same privileges as though he were located in the center of that place.

Redirect examination:

Mr. Wimbish: I want to ask you, in that connection, if the real objection is not this, that under the rebilling Nashville gets into points in your territory at a less rate than you do?

Mr. Hudson: There are some points that they do get into at a less rate than we do—some points within five miles of us.

Recross-examination:

Mr. Baxter: That is due to the Railroad Commission of Georgia, is it not?

Mr. Hudson: I do not understand that the Railroad Commission of Georgia has anything to do with the rate from Ohio River points to the Chattahoochee.

121 Mr. Baxter: I understand that; but I am speaking of local rates out from Atlanta to those points in Georgia; the any quantity rate. The Georgia Commission prescribes the any quantity rate there in Georgia, does it not?

Mr. Hudson: Yes sir.

Examiner Drayton: Is that all?

Mr. Wimbish: Yes sir.

A. W. HODNETT was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Mr. Wimbish: Give your name and initials to the stenographer, please.

Mr. Hodnett: A. W. Hodnett.

Mr. Wimbish: Please state your residence.

Mr. Hodnett: Atlanta, Ga.

Mr. Wimbish: What is your occupation, what company are you connected with, and what is the business of that company?

Mr. Hodnett: I am in the wholesale grain business as a member of the firm of W. S. Duncan & Co.

Mr. Wimbish: You are the complainants in this case?

122 Mr. Hodnett: I believe they have put us down as the complainants.

Mr. Wimbish: Mr. Hodnett, in what business is your company engaged?

Mr. Hodnett: We are in the flour and grain business.

Mr. Wimbish: How long have you been in that business?

Mr. Hodnett: I have been with the firm eighteen years. The firm has existed for about twenty-five years, I think.

Mr. Wimbish: Have you any sacking facilities in Atlanta in connection with your business?

Mr. Hodnett: Yes; we have an elevator, sacking plant and automatic scales.

Mr. Wimbish: Is that a modern plant that is as capable of doing business as it is done in Nashville?

Mr. Hodnett: Yes; it was built by a man who lives in Nashville, and who built all the elevators there for Schuyler & Schuyler.

Mr. Wimbish: If you get a carload of grain which has to be inspected, graded, sacked and shipped out, do you obtain any allowance for that?

Mr. Hodnett: No sir; we do not get any elevation allowance at all.

123 Mr. Wimbish: Can you, and do you, perform the same service as is performed by the elevators at Nashville?

Mr. Hodnett: We do.

Mr. Wimbish: For which they receive three-fourths of a cent per hundred pounds?

Mr. Hodnett: Yes sir.

Mr. Wimbish: Do you know of any other elevators in Atlanta?

Mr. Hodnett: There are no other elevators; but J. H. Frazier & Co. have a sacking plant. They have no elevator, but they sack it by some electric power, I think.

Mr. Wimbish: What has been your experience with respect to the Nashville competition resulting in the advantage derived from rebilling and shipping in any quantity rate, within the territory in which you do business?

Mr. Hodnett: That competition has been more keenly felt during the last few years than ever before.

Mr. Wimbish: What do you find is the reason for that?

Mr. Hodnett: Well, I think the principal reason is that the rail-

roads have improved their terminal facilities to such an extent t
they handle the goods, grain and hay and everything of that ki
promptly, and there is no congestion, whereas it was forme
124 a week and sometimes ten days before you could get a
even out of Atlanta. As it is now, a small dealer out i
little country town near Atlanta can drop a postal up to Nashv
and get his goods, and it only takes one day longer than to get th
from Atlanta. Formerly, he did not know when he would
them. I think that is one of the reasons. Another reason is t
Nashville has become more aggressive in the last few years, and,
I understand it, there are about forty-two grain dealers in Na
ville now, where a few years ago, there were possibly only ten
fifteen. The competition is naturally keener between those deal
in Nashville, and they push the trade harder than they ever
before.

Mr. Wimbish: Has the wholesale business in Atlanta in grai
grain products and flour increased and kept pace with the grow
and population and trade of the city?

Mr. Hodnett: We are doing less business this year than we did f
the last three years, although the population has increased, as I u
derstand it, about sixty thousand right within the city limits.

Mr. Wimbish: How does Atlanta compare with Nashville as
general jobbing center?

125 Mr. Hodnett: We claim to be the most progressive ci
in the South—a little larger than Nashville as a jobbin
center.

Mr. Wimbish: Have you more railroads serving Atlanta?

Mr. Hodnett: Yes; we have a great many more railroads tha
Nashville. I think we have—well, the Southern comprises so man
different roads now that were formerly separate, but which are a
Southern now. However, I think they claim about ten or fifte
railroads there. It is a big railroad center.

Mr. Wimbish: Is Atlanta nearer the center of this grain an
flour consuming area in Georgia and the Carolinas, and is sh
naturally situated to distribute to that territory with greater facilit
and with greater economy, rail rates being the same, than Nasville

Mr. Hodnett: I think so. I think Atlanta should be made th
distributing point for the Carolinas and Florida and Southern
Alabama.

Mr. Wimbish: Because of location and rail facilities?

Mr. Hodnett: Yes sir.

Mr. Wimbish: Where do you buy your grain?

Mr. Hodnett: We buy very largely from Peoria, St. Louis,
126 St. Joseph and Omaha. I think those are about our principal
markets. We sometimes buy in Oklahoma.

Mr. Wimbish: All the grain that you buy in Illinois and the
Northwest comes through the Ohio River gateways?

Mr. Hodnett: Yes sir.

Mr. Wimbish: How is the rate made from the point of origin in
the Northwest through the Ohio River gateways to Atlanta; is it a
combination?

Mr. Hodnett: I am not familiar with all those tariffs, but my experience has been that they pay a local up to the river, and pay a 24 cent rate if it moves through Cairo, Evansville or Louisville. If it moves through Memphis, they pay a 20 cent rate out of Memphis.

Mr. Wimbish: In other words, the through rate is a combination of the rate to the river, plus the rate from the river to the destination in the South?

Mr. Hodnett: That is the way I understand they are made.

Mr. Wimbish: Are you sufficiently familiar with rebilling to say whether, if a rate is so made up, the privilege of rebilling would be of any value?

Mr. Hodnett: Why, the privilege of rebilling is of great value.

Mr. Wimbish: The point I want to bring out, if you know,
127 is that, if the Ohio River crossings were basing points and the through rate is a combination of the two rates, then those cities get the benefit of the through rate without any rebilling. They are basing points.

Mr. Hodnett: Yes sir.

Mr. Wimbish: Through what gateway does the grain from Oklahoma and Texas move into the Southeastern territory?

Mr. Hodnett: Memphis.

Mr. Wimbish: Memphis?

Mr. Hodnett: Yes sir.

Mr. Wimbish: What do you think would be a fair differential on grain?

Mr. Hodnett: I think five cents would be a fair differential.

Mr. Wimbish: Why do you think that?

Mr. Hodnett: Well, because of the service to the railroads. They increase their expense by accepting these small shipments in less than carload lots, and they perform a service there for those people at what they call Ohio gateways, that they do not perform for the Atlanta and Macon dealer. Therefore, the Nashville grain dealer and the Louisville grain dealer can build his warehouse or
128 elevator far out from the center of the city, at a very small cost, and his goods are handled without any expense to him by the railroads, and there is no movement by drays at all. His elevation allowance pays the expense of handling his goods. In Atlanta and Macon, we are obliged to maintain expensive warehouses in the center of the city, convenient to all the depots, and we have to dray everything as it comes into the warehouse. We have to unload it out of the car, and to get to those warehouses from the track in the center of the city is very expensive. The expense of handling the grain on the drays is enormous.

Mr. Wimbish: Do you think the same differential should be applied to grain products and flour as to grain?

Mr. Hodnett: Yes; I think so.

Mr. Wimbish: The same amount, I mean?

Mr. Hodnett: Yes sir?

Cross-examination:

Mr. Lea: What is the capacity of your sacking plant?

Mr. Hodnett: Our elevator holds 20,000 bushels.

Mr. Lea: Did you not state you have a sacking plant?

129 Mr. Hodnett: We have an automatic plant; that is, I suppose, you mean an elevator? The grain is taken up into the hopper scales, and a lever is pulled and it is dropped into different bins, and the scale sits underneath that on another floor. We sack by gravitation, and just as fast as we put a sack in there it is filled.

Mr. Lea: Did you state that J. H. Frazier & Co. has a sacking plant?

Mr. Hodnett: Yes; he has some kind of a sacking plant.

Mr. Lea: What is the capacity of that?

Mr. Hodnett: He unloads it. He only has one bin, I understand, and he runs it over to this bin, and then dumps it out of the bin with an electric motor into the automatic scale. He has no facilities at all for storing the grain in bulk. We can unload a car and put it in the hopper scales, weigh it and throw it back to bulk.

Mr. Lea: Do you know the capacity of the sacking plant of A. P. Morgan & Co.?

Mr. Hodnett: He has no sacking plant.

Mr. Lea: You stated that a differential of five cents would be reasonable?

Mr. Hodnett: I think so.

130 Mr. Lea: Why is it you want a differential there?

Mr. Hodnett: To meet the competition that we have at Nashville.

Mr. Lea: You have competition with the Ohio River gateway?

Mr. Hodnett: No sir; not except in carload lots. We do not have any competition to amount to anything from Louisville, and Cairo and Evansville and Memphis except in carload lots.

Examiner Drayton: That is because the less than carload rate is higher than Nashville has to Georgia points generally?

Mr. Hodnett: Any quantity rate?

Examiner Drayton: But the less than carload rate beyond would be more than the Nashville rate? I am just trying to see the Nashville rate from the Ohio River crossings to Georgia consuming points.

Mr. Hodnett: The Nashville dealer, as I understand it, is unwilling to handle a car for five dollars profit. It costs that to handle it. Therefore, we have five dollars a car less to handle the stuff, to start with.

Examiner Drayton: I was trying to lead up to this: Why don't you people complain of the competition of the Ohio River gateways instead of Nashville?

131 Mr. Hodnett: Because they are further removed from the point of consumption, and they do not work this trade. In other words, it would take two days longer to get it from Louisville to Cairo, and the only way we can retain any business at all is by reason of the fact that often a retail merchant about twenty miles or so from Atlanta, who wants one hundred sacks of grain or fifty

sacks for the next day or for next Saturday's trade, and it would take longer to get it from Nashville or Louisville, or some other point; and they would be willing to pay a little premium to get the business from us. We have to sell those goods on long time.

Examiner Drayton: What percentage of your business is carload?

Mr. Hodnett: Why, hardly any of our business is carload business.

Examiner Drayton: When you supply a carload shipment, you bill it direct to the point of consumption?

Mr. Hodnett: No sir. If the market is pretty good and strong, we load it out of the warehouse; but if we happen to have it on the track, we send the original car out as it stands.

132 Examiner Drayton: But if you have a car en route, or, at least, were just ordering a car from the point where you purchased your supplies, you could forward that car to the point of consumption and save money on the freight, rather than bill it in to Atlanta and then rebill it out?

Mr. Hodnett: We would save the expense of transfer and reloading it, and also save the trackage.

Examiner Drayton: You save the combination and the local; would you not?

Mr. Hodnett: Oh, yes, if we get to Elberton, or some point that bases on Atlanta.

Mr. Whimbish: If you have a car billed to Atlanta, can you change that billing en route?

Mr. Hodnett: No sir.

Examiner Drayton: Do you not do any of your business in that way?

Mr. Hodnett: Occasionally, we do. Sometimes the contractors are working right near Atlanta; possibly, they live over in South Carolina; but, in order to reach that trade at all we have got *go* have a maximum amount of purchases beyond our immediate necessities. The great trouble, however, that we have is that the Nashville

133 dealer can do business on a smaller cost than we do, because of elevator allowances and transfer charges.

Examiner Drayton: When you do this business in that way, which s ten per cent carload shipments, you are on an exact quality with Nashville, in that case?

Mr. Hodnett: Yes sir.

Examiner Drayton: You are a jobber; are you not?

Mr. Hodnett: Yes sir.

Examiner Drayton: That discloses to the customer from whom you urchase the grain?

Mr. Hodnett: We never get another order——

Examiner Drayton: So you do not indulge in that business to any xtent?

Mr. Hodnett: It is a very unsatisfactory proposition, because you ave no opportunity to inspect the stuff and see it. You have to take p the billing at Atlanta and pay for it, and when it arrives at destiation, it may be rejected. It is a risky piece of business.

Examiner Drayton: Furthermore, you are standing a chance of sing customers?

Mr. Hodnett: Yes sir. Therefore we are confined to our customers who are located within the small radius of forty or fifty miles
134 from the city, and within the city.

Examined Drayton: You say you sell largely to personal friends?

Mr. Hodnett: Of course, a firm like we are, people that we know we sell to them on time.

Examiner Drayton: Even they would go back on you, if they knew from whom you purchased the grain?

Mr. Hodnett: Yes; if they knew where it was coming from. I would not like to disclose the point.

Examiner Drayton: You say you have a sacking plant? What does it cost per hundred pounds to sack grain?

Mr. Hodnett: Per hundred pounds? Oh, it costs about three dollars a car.

Examiner Drayton: And what is this allowance at Nashville?

Mr. Hodnett: ¾ of a cent.

Mr. Wimbish: Which is about equal to three dollars a car?

Mr. Hodnett: We figure three dollars a car.

Examiner Drayton: What is the actual cost?

Mr. Hodnett: Not counting the cost of the sack; just the labor.

135 Examiner Drayton: So that this allowance at Nashville does represent the actual cost of the work?

Mr. Hodnett: Yes. They have that much over us to start on. In addition to that, when the car moves up to the Nashville elevator, when he goes to reload it on that second movement, he does not have to pay any trackage at all; and we pay five dollars a car.

Examiner Drayton: Does the Nashville man get more or less of an allowance for this sacking than the work is actually worth?

Mr. Hodnett: I do not think he is getting more than it is actually worth; but he is paying his expenses.

Examiner Drayton: He has an allowance that you have not?

Mr. Hodnett: Yes; he is having his expenses paid, and I am paying my own, out of my own pocket.

Mr. Lea: If your petition was granted, you would be able to make more money?

Mr. Hodnett: I do not know that we would make any more net profit than we do, but we could increase the volume of our business to some extent.

Mr. Lea: Why would you increase the volume of your business?

136 Mr. Hodnett: Well, it would cut Nashville out of the filling of these orders for small lots. They would continue to handle carload lots just as now.

Mr. Lea: They would eliminate Nashville?

Mr. Hodnett: In small lots, we would, to some extent, eliminate Nashville. In carload lots, it would be impossible to do that, unless you gave us the rebilling privilege.

Mr. Lea: Well, if you take the rebilling privilege from Nashville?

Mr. Hodnett: Yes sir; we would do that same business.

Mr. Lea: Do you want to take away from the jobber and retailer and consumer one of the competitive markets that they have now?

Mr. Hodnett: I want to say this: I want to go on record as being opposed to the rebilling privilege anywhere. I think it is a wrong practice, and I do not think Nashville is entitled to it.

Mr. Lea: That applies equally to Cairo, Louisville and Evansville?

Mr. Hodnett: There is no rebilling at Cairo and Evansville. My experience is that hay and grain move from points of pro-
137 duction up to the river on local rates. In Illinois the rate is 9 cents, which is 24 beyond. I pay 23 cents a hundred——

Mr. Lea: That is naturally given to them there?

Mr. Hodnett: Given to whom?

Mr. Lea: To those points.

Mr. Hodnett: That is not rebilling.

Mr. Lea: That is the effect of it; it is equivalent to it?

Mr. Hodnett: I cannot see it that way. It is rebilling to Nashville, but it is not to Cairo.

Mr. Lea: If Nashville had the same railroad facilities——

Mr. Hodnett: Suppose the rate from Cairo to Nashville is 11 cents, and from Nashville to Atlanta 17 cents. That is 28 cents. Instead of Nashville paying 28 cents, they pay 24 cents.

Mr. Lea: Is not that equivalent to adding the local to that to make it 24?

Mr. Hodnett: I would not think so. I do not know how you would adjust that. That is not in my jurisdiction; but it is a fact that the grain does not move on a rebilling privilege through Cairo.

Mr. Baxter: You say the merchants at Nashville are al-
138 lowed sackage. What do you mean by that?

Mr. Hodnett: They are allowed elevation charges, as shown by these tariffs.

Mr. Baxter: What do you mean by sackage charges? Do you mean that it is an additional charge allowed the grain dealers at Nashville?

Mr. Hodnett: I mean that the Nashville merchant operates his warehouse elevator like we do ours, and he gets three-fourths of a cent a hundred on loading that grain out of his car and putting it in the elevator.

Mr. Baxter: Then there is, in addition, a sackage charge allowed these dealers, which is an elevation charge; is it not?

Mr. Hodnett: That is my information and belief; that a man who has an elevator and maintains a warehouse and gets a car of bulk grain up there and sacks it, he is given an allowance for that. That is my information.

Mr. Baxter: Where did you get that information?

Mr. Hodnett: From the tariffs.

Mr. Baxter: From the tariffs?

Mr. Hodnett: Yes; there is nothing in them to prevent you from allowing them that, if you want to?

Mr. Baxter: Well, as a matter of fact, it is allowed.

139 Mr. Hodnett: Well, I believe it is. There is nothing to prevent you from doing it.

Mr. Baxter: You do not know whether it has actually been done or not, except upon information and belief?

Mr. Hodnett: Except from your tariffs here. It says there "sacking." It does not say whether it is to be sacked by hand or by machinery. You can sack it either way. It is the same thing.

Examiner Drayton: You have expressed the opinion that the rebilling privilege should be abolished, that it is not justifiable. Suppose this—I do not know whether it is true or not—but suppose that this privilege was given to Nashville in order to put it on a competitive basis with the Ohio River and Mississippi River crossings, and these rates are constructed from points in the Northwest on a combination basis amounting, as it probably does, to the same thing as a rebilling privilege. Would you in that case say that the rebilling privilege at Nashville, for the purpose of putting that place on an exact equality with those crossings which are near it, is not justifiable and is improper?

Mr. Hodnett: I do not think conditions there authorize them to have rebilling. They are as far from the Ohio River as they
140 are from Atlanta. If you are going to extend it that distance, you might as well extend it down to Atlanta, for the reason that Atlanta has more railroads, and could be made a greater distributing center than Nashville, *of* you apply the same rates.

Redirect examination:

Mr. Wimbish: I will ask you this question, on the line of the question of the Examiner. If Nashville, being on the Cumberland River, occupies a competitive situation, the fact of the river should and does result in lower rates into Nashville. Do you regard that as being true?

Mr. Hodnett: It would be possible, I suppose.

Mr. Wimbish: You say the normal rate from Louisville to Nashville is 15 cents per hundred pounds, and the competitive rate, because of the Cumberland River, brings it down to 10 cents per hundred pounds. But what effect could the river competition have on the rate south of Nashville to Atlanta?

Mr. Hodnett: It would not have any effect.

Mr. Wimbish: If the local is 17 cents, and that rate, in order to give Nashville rebilling, is shrunk 3 cents, what possible effect could the Cumberland River have on that?

141 Mr. Hodnett: If they will give us the differential on that, it would not have any effect on us.

Mr. Wimbish: What I want to bring out is that with the river competition and with lower rates into Nashville, it can have absolutely no effect on the through rate beyond the Ohio River to the Southeast, whether through Nashville, or around Nashville, because we have the same rate by shrinkage from Nashville over the L. & N. The Cumberland River has no effect on it.

Mr. Hodnett: I want to say that if there was actual competition there, and if they did operate a line of boats, whatever the charge was, the railroads would have to meet it; but the fact is that there is only one little boat line operated from Nashville to St. Louis.

Examiner Drayton: I was assuming a state of facts. I said I did not know whether it was true or not; but I simply assumed that this was given to Nashville for the purpose of preserving the competitive conditions between that point and the Ohio River crossings. Would that, in the opinion of Mr. Hodnett, justify the rebilling privilege at Nashville?

Mr. Wimbish: Yes; I understand. I only wanted to develop the other idea, that the river had no bearing on this through
142 rate.

Examiner Drayton: Yes sir.

Are there any further questions to be asked, Mr. Hodnett?

Mr. Baxter: No sir.

J. A. FLOURNOY, witness produced by and on behalf of the complainants, having been first duly sworn, testified as follows:

Mr. Watkins: Where do you live?

Mr. Flournoy: Macon, Ga.

Mr. Watkins: What is your business?

Mr. Flournoy: Grocery business.

Mr. Watkins: How long have you been in that business?

Mr. Flournoy: I have been in the grocery business about fourteen years, but only in the jobbing end of it for about three years.

Mr. Watkins: Did you ever have any other business experience than in the grocery business?

Mr. Flournoy: Yes sir.

Mr. Watkins: In what line?

Mr. Flournoy: I worked for the Central Railroad for thirteen years.

143 Mr. Watkins: In what capacity?

Mr. Flournoy: In handling freight in the warehouses at Macon.

Mr. Watkins: Handling it in what capacity?

Mr. Flournoy: Loading, transferring and unloading.

Mr. Watkins: Have you given any consideration to the relative cost to the railroads of moving freight in carloads and less than carloads?

Mr. Flournoy: Yes sir.

Mr. Watkins: What is the difference, if any, in the cost, and how do you arrive at it? Explain that fully.

Mr. Flournoy: I should say that if the rate of 50 cents a barrel on flour from St. Louis to Macon is a nominal charge, the roads lose at least two dollars a barrel on every barrel they haul in five barrel lots from St. Louis to Macon.

Mr. Watkins: That is, if 50 cents would be a fair charge on a carload rate.

Mr. Flournoy: Yes sir.

Mr. Watkins: If they move in five barrel lots on the same rate, they would lose——

Mr. Flournoy: Yes sir.

144 Mr. Watkins (continuing): —the amount you have mentioned?

Mr. Flournoy: It would cost them at least five times as much—ten times as much, to move a five barrel lot from St. Louis to Macon as it would to move a carload.

Mr. Watkins: How do you arrive at that?

Mr. Flournoy: The car lot is loaded by the shipper and one bill is made out for it, and it moves to Macon in a through train in about four days. It is placed on a private warehouse siding of some jobber, and is unloaded by the consignee, without any expense to the road at all. Only one connection of freight is made. In a less than carload lot, the shipment is drayed into the depot at St. Louis, and it has to be weighed over the scales or checked over the scales by a receiving clerk. Later in the day, another clerk comes along and puts it into the car, checks it again, and then it goes in that car down to Louisville or Nashville. There it is taken out of the train and put in the ware house, where it stays all day long and one night, and then it is put into another car and shipped down to Chattanooga. When it gets down there, it goes through the
145 same process; and this flour is loaded in there with hardware and in dirty cars, and they cannot put a full carload in there. Under the most strenuous orders from the superintendent, they never have been able to get as much as ten tons average mixed freight in a car. The solid cars move with 40,000 pounds, usually. They get less than half of that in a mixed car. That car goes on down to Atlanta, and goes through the same process over at the W. & A. depot. It stays there all day long, and the next day is transferred to the Southern depot, and it goes through the same process at Macon. It gets down to Macon in the course of anywhere from not less than ten days to about ten or fourteen days, usually. When it gets down there, at least ten per cent of the sacks are torn, and they are all dirty, and there is a claim on nearly every shipment. It is unloaded in the depot at Macon, and notice is sent out to the man. He comes in a day or two with his dray and takes it. Now, if you move 200 barrels of flour, it takes twenty times that same thing to go through with. It takes an average of at least one dray and two or three laborers at every transfer point, and it is transferred about five times—not less than three times. The whole 200 barrels is handled by the billing clerks and transfer clerks, and all
146 together, to handle 200 barrels of flour in five barrel lots, it takes 320 clerks and 720 laborers.

Examiner Drayton: How do you get that? Do you count the force working on each lot as a separate force?

Mr. Flournoy: As a separate force, yes sir.

Mr. Watkins: That is the practice of men that have touched those different movements?

Mr. Flournoy: Yes sir.

Mr. Watkins: And in the carload, has anybody got to handle the product at all?

Mr. Flournoy: No sir; they do not touch it at all.

Examiner Drayton: They may be the same men?

Mr. Flournoy: Oh, yes; the same men at different times.

Mr. Watkins: You say the loss in damage is much greater on the less than carload lots?

Mr. Flournoy: Yes sir. In carload lots, there is never any claim, unless the car has a leaky roof, or is damaged in some way, which happens very seldom.

Mr. Watkins: If a carload of bulk grain is shipped, is it not carried under the seal of the shipper?

Mr. Flournoy: Yes sir.

Mr. Watkins: Upon the arrival of that car at the place of consignment, if there is no break in the car and no break of the
147 seal, and there should be a shortage of grain, it would not fall on the carrier, but on the consignor?

Mr. Flournoy: The consignor.

Mr. Watkins: If there is a shortage in small lot shipments upon the arrival at the point of destination, that would cause a claim against the railroad company for the shortage?

Mr. Flournoy: Yes sir. A slight differential would be incurred as a movement of that freight in car lots.

Mr. Watkins: Of course, your illustration of five barrel lots is an extreme one. There may be less than carloads in larger amounts than that, but, from your experience, what would you say would be the average less than carload lot?

Mr. Flournoy: About five barrels.

Mr. Watkins: About five barrels?

Mr. Flournoy: Yes sir.

Mr. Watkins: That is not, then, an extreme of the average of less than carload movement?

Mr. Flournoy: No sir. Less than carload lots are always sold to retailers, and five barrels is the usual quantity that they buy.

Mr. Watkins: Has Macon, during the last five or ten years increased in population?

148 Mr. Flournoy: Yes sir.

Mr. Watkins: Has the volume of its business in these years increased in proportion to the increase in population?

Mr. Flournoy: No sir.

Mr. Watkins: Is there any less than carload movements of any consequence from the Ohio and Mississippi River crossings?

Mr. Flournoy: No sir.

Mr. Watkins: The less than carload movement to Georgia points are largely from Nashville; are they not?

Mr. Flournoy: Yes sir.

Mr. Watkins: You may examine the witness.

Mr. Baxter: I have no questions.

The Examiner: Did you say you have no questions to ask the witness?

Mr. Baxter: No sir.

JOHN S. NIXON, a witness produced on behalf of the complainants, having been first duly sworn, testified as follows:

Mr. Watkins: Please give the stenographer your name.

Mr. Nixon: John S. Nixon.

149 Mr. Watkins: Where do you reside?
Mr. Nixon: Augusta, Georgia, sir.
Mr. Watkins: What is your business?
Mr. Nixon: Wholesale grocery and grain provisions.
Mr. Watkins: How long have you been engaged in that busines
Mr. Nixon: About twenty-five years, sir.
Mr. Watkins: What is the situation of Augusta with reference t transportation facilities?
Mr. Nixon: We have got a good many roads out from Augus We ought to have a good business there, but our business, for som years, has been cut down very much indeed. For instance, the ca load business was taken away from us. It has been almost impossibl for us to sell grain and flour and the like of that. During the las few years, and especially during the last year and a half, it seem as though Nashville has been very zealous to get that trade, and the have cut down our business very much, very much indeed. To good many points beyond Augusta, for instance, Nashville can shi grain and flour cheaper than we can.
Mr. Watkins: Illustrate that last statement, of yours, will you? Take the town of Hamburg.
150 Mr. Nixon: Yes sir.
Mr. Watkins: What is the rate from Nashville to Augusta?
Mr. Nixon: The rate from Nashville to Augusta is 19 cents.
Mr. Watkins: It is?
Mr. Nixon: On Class D.
Mr. Watkins: What is the rate from Nashville to Bamburg on the same class?
Mr. Nixon: The rate from Nashville to Bamburg—it is 29 cents.
Mr. Watkins: What is the rate from Augusta to Bamburg?
Mr. Nixon: 13 cents—a total of 32 cents against 29 cents.
Mr. Watkins: It costs you then——
Mr. Nixon: 32 cents.
Mr. Watkins: To make a shipment from Nashville to Bamburg?
Mr. Nixon: Yes sir.
Mr. Watkins: And it costs Nashville 29 cents?
Mr. Nixon: Yes sir.
Mr. Watkins: Where is Bamburg?
Mr. Nixon: Sixty miles below Augusta.
Mr. Watkins: Is it a junction point?
151 Mr. Nixon: No sir.
Mr. Watkins: Has it any competition?
Mr. Nixon: No sir; it is just a local station on the Southern Railway.
Mr. Watkins: Just a local point on the Southern Railway?
Mr. Nixon: Yes sir.
Mr. Watkins: No other road than the Southern reaches it?
Mr. Nixon: No sir.
Mr. Watkins: The same relative difference would apply on flour in barrels and other things?
Mr. Nixon: Yes sir.
Mr. Watkins: That illustrates the general conditions with reference to all these products?

Mr. Nixon: Yes sir. Flour in barrels to Nashville is 59 cents; Augusta is 38 cents; and the local is 28 cents, making 56 cents.

Mr. Watkins: You mean 66 cents?

Mr. Nixon: Yes sir.

Mr. Watkins: That is how much in barrels against Augusta?

Mr. Nixon: 7 cents.

152 Mr. Watkins: There is a 7 cent differential against you in the sale of good- to this little village on the Southern Railway?

Mr. Nixon: Yes sir.

Mr. Watkins: Beyond your station?

Mr. Nixon: Yes sir.

Mr. Watkins: Does that same relative situation apply to other towns?

Mr. Nixon: Yes; a great many other towns—some places not quite as much. At some places, it would get down to one cent, and then run up to three again.

Mr. Watkins: What part of the territory contiguous to Augusta can you reach as cheaply as Nashville?

Mr. Nixon: Well, the points very close to Augusta in Georgia territory, and some places on the Georgia Road are based on the Augusta rate, plus the local. We can meet them at the same price.

Mr. Watkins: They have an elevator allowance which you do not have?

Mr. Nixon: Yes sir.

Mr. Watkins: So, even on those points, they have that advantage of you?

153 Mr. Nixon: Yes sir; they have that advantage of us.

Mr. Watkins: Is it any advantage to a wholesale dealer in these products to be able to store the products for six months on a rate that would be protected, so that there would be no advantage in operation in prices?

Mr. Nixon: Oh, yes.

Mr. Watkins: Is that an advantage?

Mr. Nixon: Yes sir.

Mr. Watkins: If you sell goods to a merchant in Augusta and ship them direct from the place where you purchase them to your customer, you must deliver them at once?

Mr. Nixon: Yes sir.

Mr. Watkins: That is the condition under which you purchase?

Mr. Nixon: Yes sir.

Mr. Watkins: You would not have the advantage of holding the goods for six months?

Mr. Nixon: No sir. The ten days that I understand is allowed Nashville to handle our grain would be a great advantage to us, if they would allow that grain to stand on the tracks or in the depots.

Mr. Watkins: If the roads would hold your grain for ten
154 days for you at Augusta, in cars or otherwise, without demurrage?

Mr. Nixon: It would be a big advantage. We could inspect our

grain, and in some places forward it and sell it in carload lots, but now we would not want to do it——

Mr. Watkins: What is the reason for that?

Mr. Nixon: We would not do it, especially in the spring of the year; but at this time of the year, to a customer to know and feel that he will not take advantage of it, we may do it. But in the spring or summer we would not think of doing it.

Mr. Watkins: You have to rely on the honesty of your customers?

Mr. Nixon: We have, in some places, tried to sell corn, and gave the privilege of examining it when it came through, but they would not agree to it. So we had to abandon that.

Examiner Drayton: Just explain how your customer might defraud you?

Mr. Nixon: Here is the idea. We would not know what kind of corn is going there, and we would prefer to stop it at Augusta and pay the freight on it.

155 Examiner Drayton: You do not know whether it would be satisfactory to him, or what you want to charge him for it?

Mr. Nixon: We do not know.

Mr. Watkins: Suppose he claimed it did not come up to grade, and the man who sold it to you said it did?

Mr. Nixon: We would not have any nowledge of that or have any redress.

Mr. Watkins: You could not go back on the man that sold it to you?

Mr. Nixon: No sir.

Mr. Watkins: Do you think that differential should apply between carloads and less than carloads?

Mr. Nixon: Yes sir.

Mr. Watkins: Why so?

Mr. Nixon: Because I think the territory contiguous to Augusta belongs to Augusta, and Augusta ought to have it, and I do not think Savannah, Macon, Atlanta or Nashville has an- right to it. We are situated on the Southern Railway, and if it was to put us in Columbus' territory and give us Columbus' business, I do not think we would be entitled to it.

Mr. Watkins: Is there any difference in cost to the carriers?

156 Mr. Nixon: Yes, very much. I have been in business for myself for about twelve years. I have been connected with a big grocery store ever since about 1883, and I do not remember making a claim on a car of flour, on account of coming in in equipment that was not in perfect condition, unless it was transferred or had some leaky roof, or something of that order.

Mr. Watkins: If these commodities move in carloads, and the equipment is in ordinarily fair condition, and there is no wreck or anything of that kind, is there any chance for a damage claim?

Mr. Nixon: No.

Mr. Watkins: What are the additional opportunities for damage that arise in less than carload lots?

Mr. Nixon: Well, it is the continuous transit; it depends on where the goods come from. Of course, if they come from Nashville, they are not transferred as much as if they came from Louisville or some other place beyond; but they are transferred time and again. I saw a great deal of it transferred at Augusta. I saw them there with a big force of hands—breaking bulk, they call it. We see shipments come in with torn sacks, on dirty trucks, and the
157 flour comes in in dirty condition, and besides that shortages occur. One of the things that I think is against the railroad is that they do not get the total out of the cars. All the cars that we get come with 200 or 250 barrels of flour in them—40,000 pounds or over, and these cars that are allowed to break in bulk, I do not think they are over 25,000 pounds. The railroad does not get the full total out of them. The same way with me. Most of our corn comes from the Far West, Kansas City, Nebraska, and St. Joseph, Missouri, and they come in not less than 80,000 pounds in the car, or a thousand barrels of corn in the car, and the railroad gets the full total in each car.

Mr. Watkins: They would not get that on these mixed shipments?

Mr. Nixon: I doubt whether they run 30,000 pounds.

Mr. Watkins: What is the minimum on bulk grain?

Mr. Nixon: You can get anything from Nashville; you can get five sacks.

Mr. Watkins: I mean on bulk shipments?

Mr. Nixon: It is 40,000 on corn.

Mr. Watkins: You may examine.

Mr. Baxter: I have no questions.

158 Examiner Drayton: Were you ever in a position to compete in contiguous territory better than you are now?

Mr. Nixon: Well, we sometimes have better facilities, and sometimes we can compete. It depends on the condition of the market. Sometimes we——

Examiner Drayton: I mean, heretofore, has there ever been any rule or regulation or rate——

Mr. Nixon: Nashville has had rebilling ever since I remember.

Examiner Drayton: You spoke of a loss in your business; you said your carload business was taken away from you.

Mr. Nixon: Yes. The Nashville people just seem to have gone out on all sides; but I understand that instead of there being twelve or fourteen dealers there now, there are fifty-five or fifty-six. There are more people after the business. They have got this advantage and they are keeping the advantage.

Examiner Drayton: In other words, they simply took away the carload business first?

Mr. Nixon: Yes; and now they are going after——

Examiner Drayton: So that that was not made possible by virtue of any change in the rule whatsoever, giving them a greater
159 advantage than they ever heretofore had?

Mr. Nixon: No; this advantage has been going on for some time.

Examiner Drayton: This is one, and any other that they may have had?

Mr. Nixon: Yes; Atlanta had a little rebilling once, I remember, but I do not think it lasted very long.

Examiner Drayton: Did that have any appreciable effect on your business?

Mr. Nixon: Yes. They were closer to us. We do not have any trouble from the Ohio River points beyond Nashville, for instance, except with Ballard in the flour business. They have established agencies all over the South, and ship in small lots, or any way that they can.

Examiner Drayton: Would it altogether remove your complaint if the present less than carload rate at Nashville were abolished?

Mr. Nixon: It would give us what belongs to us.

Examiner Drayton: Leaving them to have what remained on the rebilling privilege; but say they have the right to expect on shipments passing through Nashville and ship them out in car loads at the through rate?

Mr. Nixon: No sir; we would both be on the same basis.

160 Examiner Drayton: You would not be as to carload shipments?

Mr. Nixon: We cannot buy our grain as cheaply as they can. If they have got any local corn there, and they can sell it any cheaper than we can bring it from Omaha, Nebraska, and sell it—there is no reason why we cannot buy it as cheaply as they do.

Examiner Drayton: I mean if the rebilling privilege were left in at Nashville as to carload shipments, they would still have a slight advantage over you, to the extent of that privilege?

Mr. Nixon: Yes sir.

Examiner Drayton: As to carload shipments?

Mr. Nixon: Yes sir.

Examiner Drayton: But your complaint would be so far satisfied that is, your business is so largely confined to less than carload business that you could get along with that?

Mr. Nixon: Yes; we could give them the carload shipments but we feel that on less than carload shipments we ought to compete with them or stay down and out. We buy about fifty or sixty bushels of corn at a time, and we think that is a big enough purchase.

161 Examiner Drayton: You are a jobber too, are you not?

Mr. Nixon: Yes sir.

Examiner Drayton: And never bill your carload shipments direct to the consumer?

Mr. Nixon: I have done it in a few instances.

Examiner Drayton: It is simply, because you are in danger.

Mr. Nixon: Yes; and it is not worth the risk.

Mr. Watkins: What is the annual volume of your business?

Mr. Nixon: 700,000, sir.

Mr. Watkins: $700,000?

Mr. Nixon: Yes sir.

Mr. Watkins: That is all.

WEEMS A. SMITH, produced as a witness on behalf of the complainants, having been first duly sworn, testified as follows:

Mr. Watkins: Do you live in Augusta, Ga.?
Mr. Smith: Yes sir.
Mr. Watkins: What is your business?
Mr. Smith: Wholesale grocer?
Mr. Watkins: How long have you been in that business?
Mr. Smith: Nine years.
162 Mr. Watkins: Did you hear the testimony of Mr. Nixon with reference to the advantages of Nashville over Augusta and the surrounding territory?
Mr. Smith: Yes sir.
Mr. Watkins: From your experience can you state whether or not that testimony is true?
Mr. Smith: Yes; that statement is correct.
Mr. Watkins: Do you know whether or not there is any reason, in fact, why there should be a higher rate on less than carloads than on carloads?
Mr. Smith: Because it costs more to handle.
Mr. Watkins: It costs the railroads more to handle?
Mr. Smith: Yes sir.
Mr. Watkins: If the railroads handle a more costly traffic at the same price that they handle a less costly traffic, is not that a discrimination against the man who ships the less costly traffic?
Mr. Smith: Yes; he is either overcharged, or the other man is undercharged.
Mr. Watkins: What is the volume of your firm's business?
Mr. Smith: A half a million dollars.
Mr. Watkins: Per year?
163 Mr. Smith: Yes sir.

Mr. Watkins: You may examine.
Mr. Baxter: I have no questions.
Examiner Drayton: That is all, Mr. Smith.

JOHN E. MURPHY, was produced as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:
Mr. Watkins: Give your name to the stenographer.
Mr. Murphy: John E. Murphy.
Mr. Watkins: You live in Augusta?
Mr. Murphy: Yes sir.
Mr. Watkins: What is your business?
Mr. Murphy: Wholesale grocer.
Mr. Watkins: What is the style of your firm?
Mr. Murphy: Murphy & Co.
Mr. Watkins: What is the annual volume of your business?
Mr. Murphy: A half million dollars.
Mr. Watkins: Did you hear the testimony of Mr. Nixon with reference to the advantages that Nashville has over Augusta?
Mr. Murphy: I did.

164 Mr. Watkins: What would you say, from your experience as to that being the situation?

Mr. Murphy: It is identically correct.

Mr. Watkins: Your experience has been the same as his?

Mr. Murphy: The same as his, yes sir.

Mr. Watkins: You may examine the witness.

Mr. Baxter: I have no questions.

Examiner Drayton: Has your business ever been in excess of $500,000 a year?

Mr. Murphy: Well, we have increased our business in two or three ways in the last two years by putting more capital into the business, but before we did that the business was gradually getting less. That was about three years ago.

Examiner Drayton: How can you overcome this discrimination by putting more capital into the business?

Mr. Murphy: We can put more salesmen on and do more business.

Examiner Drayton: Could you, in like manner, increase your business now, if you had more capital to put into it?

Mr. Murphy: We have about reached our limit.

Examiner Drayton: How can you know, positively, that?

Mr. Murphy: We got it as far as——

165 Examiner Drayton: You have simply covered all the territory to which you are entitled?

Mr. Murphy: Yes sir.

Mr. Watkins: You now cover all the territory which is possible to Augusta?

Mr. Murphy: Well, not quite all, but practically all.

Mr. Watkins: Has the Augusta territory lessened or increased in the last few years?

Mr. Murphy: It has lessened.

Examiner Drayton: Are there any further questions to be asked this witness?

Mr. Watkins: That is all.

Examiner Drayton: Is there anything further, Mr. Watkins?

Mr. Wimbish: We rest here, Mr. Examiner.

Mr. Baxter: Shall we proceed with our case this afternoon?

Examiner Drayton: You may go on this afternoon, as far as we are able to.

Mr. Baxter: All right.

166 C. B. Compton, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Mr. Baxter: State your name, residence and occupation.

Mr. Compton: C. B. Compton, residence, Louisville, Ky.; Traffic manager of the Louisville & Nashville Railroad.

Mr. Baxter: How long have you been engaged in the railroad traffic business in the United States?

Mr. Compton: I have been in the railway traffic business in the United States since the 1st of August, 1871.

Mr. Baxter: With what transportation companies have you been connected, and in what capacities have you served with each?

Mr. Compton: I have been in the continuous service of the Louisville & Nashville Railroad over the period of years just mentioned, in various capacities, such as clerkships, agencies, general freight agencies and traffic manager.

Mr. Baxter: State whether or not your training and experience has been such as to enable you to form opinions as to the reasonableness or unreasonableness of the rates on grain and grain products and hay, and the rules and regulations of the defendant carriers relating to the transportation of the same between the points
167 in controversy and that are in question in this case.

Mr. Compton: I should think so.

Mr. Baxter: How long has the practice of reshipping grain, grain products and hay at Nashville, Tenn., been established, and explain why it was inaugurated, and explain why it is continued.

Mr. Compton: The practice of reshipping grain, grain products and hay *at* Nashville, Tenn., was established, so far as the available records show, about 1870, by the Nashville, Chattanooga & St. Louis Railway, and prior to the extension of the Louisville & Nashville Railroad Company south of Nashville. It was originally instituted in order to protect the revenues of the Louisville & Nashville, the Nashville & Northwestern, and the Nashville, Chattanooga & St. Louis Railroad, against competition of boats operating in the Cumberland River, it having been possible for the boat lines to handle grain and flour from Cairo, Paducah, Evansville and St. Louis, and other western points to Nashville and to reship thence to points in the Southeast at lower rates than the combination of locals of the rail lines to and from Nashville would make, and it was necessary therefore for the rail lines in order to secure their
168 share of the traffic, to establish lower rates on such business than the combination of local rates to and from Nashville, and therefore the custom of protecting the through rates from points of origin to final destinations on business shipped to Nashville and reshipped thence was inaugurated.

Mr. Baxter: With what primary markets of origin and transshipment does Nashville compete, and how do the rates on reshipped grain, grain products and hay from those points to Southeastern territory compare with the rates on reshipped grain, grain products and hay from Nashville to points in Southeastern territory?

Mr. Compton: The primary markets are Cincinnati, Ohio, Louisville, Kentucky, New Albany, Indiana, Evansville, Indiana, Henderson, Kentucky, Paducah, Kentucky, Cairo, Illinois, St. Louis, Missouri, East St. Louis, Illinois, and Memphis, Tennessee, and such points as those located upon the Missouri River—Kansas City, St. Joe, etc.

The through rates from points in the territory north of the Ohio River and West to the Mississippi River to points of destination in Southeastern territory are made through the Ohio and Mississippi River crossings, and the through rates from origin to desti-
169 nation apply through those crossings, and under the reshipping rules in force at Nashville, Tenn., the same through

rates as applied through the various Ohio and Mississippi River crossings also apply through Nashville, Tennessee, on business reshipped at that point. All of the points that I have mentioned compete with each other for the business in Southeastern territory in those commodities.

Mr. Baxter: State whether in your opinion, under the present adjustment of rates, rules and regulations of the defendants, relating to the transportation of grain, grain products and hay, from Ohio and Mississippi River crossings and beyond, to Southeast destinations, complainants and others similarly situated, or the localities in which they do business, are unjustly discriminated against, in favor of Nashville, and give your reasons fully and in detail for any opinion you may express.

Mr. Compton: In my opinion, neither the complainants nor others similarly situated, nor the localities in which they do business are unjustly discriminated against in favor of Nashville, Tenn., under the present adjustment of rates, rules and regulations relating to the transportation of grain, grain products and hay from
170 Ohio and Mississippi River crossings to points in southeastern territory for the reason that under said adjustment the merchants located at points of destination have the benefit of exactly the same rates as the merchants located at the points of origin or at Nashville, Tenn., and are on an exact equality with merchants located at Nashville.

Mr. Baxter: State whether, in your opinion, the privilege of reshipping as allowed and practiced at Nashville operates as a device whereby the charge for transportation between Nashville, Tennessee, and Atlanta, Macon, Columbus, and other cities in Georgia is lessened, and give your reasons fully and in detail for any opinion you may express.

Mr. Compton: No sir; it does not. It simply places Nashville and the merchants and dealers of Nashville in a position to compete with the various Ohio and Mississippi River crossings, and with the merchants and dealers located thereat, and enables the railroads serving Nashville to control their proper share of the traffic in competition with boats in the Cumberland River.

Mr. Baxter: File as Exhibit A, circulars and tariffs of your company authorizing the reshipping of grain and grain products
171 and -hat at Nashville when originating at Ohio and Mississippi River crossings and beyond, destined to points in Southeastern territory.

Mr. Compton: I file as Exhibit "Compton A," circulars in four numbers, numbered and dated as follows:

I. C. C. No. A-10323, effective October 4, 1908.

Mr. Watkins: What does that supersede?

Mr. Compton: I beg your pardon. That supersedes I. C. C. 10069, which you have.

I. C. C. No. A-10311, superseding I. C. C. No. A-10099, effective October 2, 1908.

I. C. C. No. A-1039, cancelling I. C. C. No. A-10100, effective October 2, 1908.

I. C. C. No. A-10313, superseding I. C. C. No. A-9913, effective October 2, 1908.

(The circulars referred to are filed herewith, marked, respectively, Exhibits "Compton-A-1," "A-2," "A-3," and "A-4.")

Mr. Baxter: These statements are published regularly and filed with the Interstate Commerce Commission; are they not?

172 Mr. Compton: Yes sir.

Mr. Baxter: State whether under the reshipping arrangements set forth in said circulars, Nashville dealers can or do deliver grain and grain products or hay, at points in Georgia contiguous to Atlanta, Macon, Columbus, Albany, Rome, Athens, or other cities in Georgia, at lower rates than can or do dealers located at each of those cities or points contiguous to and naturally tributary to each of those cities.

Mr. Compton: No sir; the Nashville dealers cannot and do not deliver grain, grain products and hay at points in Georgia contiguous to Atlanta, Macon, Columbus, Albany, Rome, Athens, or other cities in Georgia at lower rates than are available to the merchants and dealers located at each of those cities on traffic destined to points contiguous and naturally tributary to each of those cities.

Mr. Baxter: Is it not a fact that what is true of Nashville, Tennessee, in respect to the last question is also true of the Ohio and Mississippi River crossings and points from which rates are made with relation thereto?

Mr. Compton: Yes sir.

Mr. Baxter: State whether in your opinion the present rate adjustment of the defendants, upon grain, grain products and

173 hay, unjustly discriminates against any jobbing city in the State of Georgia and give your reasons fully and in detail for any opinion you may express.

Mr. Compton: No sir; because under the present adjustment of rates on grain, grain products and hay from the West to the Southeast, each jobbing city and the merchants and dealers located thereat are on a parity with the primary markets of origin and the merchants and dealers located thereat, in the territory naturally tributary to each of said jobbing cities. This is due to the fact that the through rates from Ohio and Mississippi River crossings and points north and west thereof on grain, grain products and hay to local stations in the Southeastern territory are made on combination of tariff rates to the nearest jobbing center plus local rates thence, and therefore, the merchants and dealers located at the jobbing centers can have the traffic shipped to them and can ship it out locally and secure exactly the same through rates as can the merchants and dealers located at the various Ohio and Mississippi River crossings secure on direct through shipments of grain, grain products and hay.

Mr. Baxter: State whether or not under said adjustment each jobbing town or city in the State of Georgia is able to com-

174 pete on an equal basis with shippers located at points of origin—I mean primary markets—of trans-shipment of

grain, grain products and hay, in the territory naturally contigu
ous to each of said jobbing cities.

Mr. Compton: Yes sir; they can.

Mr. Baxter: What, in your opinion, would be the effect upon each jobbing town or city in the State of Georgia, if the Commission in this case were to order each of the defendants to cease and desist from continuing to allow to the city of Nashville and the shippers therein the practice known as the rebilling privilege?

Mr. Compton: Well, the result would simply be to deprive the merchants and dealers located at jobbing centers and cities in the State of Georgia of one of their markets of supply, and to that extent to reduce the competition between the primary markets for the sale of grain, grain products and hay at said jobbing centers and cities and towns in the State of Georgia.

Mr. Baxter: State whether or not, in your opinion, the shippers at Nashville and other primary markets at Ohio and Mississippi River crossings and points with which rates are made with relation thereto, can deliver grain, grain products at Milledgeville at
175 a less transportation charge from the primary markets of origin than can shippers at Macon; in Dawson cheaper than can shippers at Columbus; in Elberton cheaper than can shippers at Athens and Augusta, operates as an undue discrimination against either Macon, Columbus, Athens or Augusta, and give your reasons fully and in detail for any opinion you may express.

Mr. Compton: No sir; because Milledgeville and Dawson and Elberton, Georgia, are jobbing centers, as well as are Macon, Columbus, Athens or Augusta, and the dealers and merchants located at Milledgeville, Dawson and Elberton are, under the present rate adjustment, enabled to compete on equal basis with the merchants and dealers located at the primary markets of origin, and Milledgeville is not naturally tributary to Macon, nor Dawson to Columbus, nor Elberton to Athens, or Augusta, and should not be made so by an arbitrary rate adjustment.

Mr. Baxter: Now, Mr. Compton, explain why the practice of reshipping at Nashville is allowed at present.

Mr. Compton: The reshipping at Nashville was inaugurated many years ago, as I explained before. The Louisville & Nashville and N. C. & St. L. Railroads were compelled to protect their reve-
176 nues and the revenues of connecting lines against the competition of the Cumberland River. Nashville is a natural primary grain market located on the Cumberland River and its location on that river gives it access and efficient means of transportation to and from the entire western country, making Nashville, so far as the Southeastern territory is concerned, not an interior southern point, but a western distributing point. The Louisville & Nashville Railroad Company, operating from St. Louis, Evansville and Louisville to Nashville, and the N. C. & St. L. Railway, operating with its connections from Cairo, Hickman, etc., to Nashville, were in competition, and are in competition, with the boats in the Cumberland River, and the movement of grain, etc., from the West to Nashville. It was necessary in order for those roads to

control the business destined to Nashville and to points in Southeastern territory through Nashville, to either establish very low rates from the Ohio River crossings to Nashville proper or to establishing reshipping arrangements at Nashville under which the through rates from the Ohio and Mississippi River crossings to points in Southeastern territory would be protected on traffic shipped and reshipped thence. By this latter arrangement it was practicable to secure the movement of traffic destined to points beyond
177 Nashville in Southeastern territory in competition with the best boat lines for the reason that the reshipping arrangements did not apply on traffic handled into Nashville by the boats. It was also found in practice that by this arrangement it was practicable to control a fair portion of the traffic destined to Nashville proper without too radically reducing the rate from the Ohio River Crossings to Nashville, which rate is at present, and has been for many years, ten cents per hundred pounds. Therefore, the reshipping arrangement at Nashville, Tennessee, was established for the double purpose of securing the movement of traffic destined to the Southeast in competition with the boats in the Cumberland River, and of protecting the revenues of the rail lines on traffic destined to Nashville proper. Of course, considerable grain traffic does and always has moved from the various Ohio and Mississippi River crossings and landings to Nashville via boat, but the reshipping arrangement has operated to give to the rail lines a reasonable portion of the traffic.

Mr. Baxter: With what primary markets can and does Nashville compete for the movement of grain into Southeastern territory?

Mr. Compton: Nashville competes with Cincinnati, Louis-
178 ville, New Albany, Evansville, Henderson, Paducah, Cairo, Memphis, Belmont, East St. Louis, St. Louis, and Missouri River points—Omaha, Kansas City, St. Joe, and other points that might be named.

Mr. Baxter: How long has this condition existed, and does it exist at present, in Nashville?

Mr. Compton: Nashville, by reason of its location on the Cumberland River, has been able to compete with other primary markets for the movement of grain traffic into Southeastern territory ever since the construction of the Nashville, & Chattanooga Railroad from Nashville to Chattanooga, in 1854. The first line constructed serving the West was the Nashville & Chattanooga Railway, completed in 1854, from Nashville to Chattanooga, Tennessee. That line, in connection with the boats operating on the Cumberland River, Ohio River, and Mississippi River, formed the first through route for the transportation of traffic from the West to the Southeast.

Mr. Baxter: What, in your opinion, would be the effect upon Nashville as to giving the other primary markets with which Nashville competes, a monopoly of the movement of grain into Southeastern territory, if the prayer of the petition was granted?

179 Mr. Compton: Well, the effect would be injurious to Nashville and its commerce and to the business of the merchants

and dealers located at Nashville, and would result in transferring the business to the various Ohio and Mississippi River crossings, although it is true that Nashville would still, by reason of its location on the Cumberland River, be able to handle a little traffic in grain destined to Southeastern territory.

Mr. Baxter: State whether, in your opinion, complainants have been, by any act of the defendants, or by the reshipping arrangements allowed to them at Nashville, deprived of trading in the territory immediately adjacent to their respective cities.

Mr. Compton: No, sir; they have not.

Mr. Baxter: Have you prepared an exhibit showing the movement of this traffic into that territory, and, if so, please explain what the exhibit is and what it purports to show.

Mr. Compton: I have, and file same as Exhibits "C. B. C. B-1" and "C. B. C. B-2."

Mr. Wimbish: Have you copies of those, Mr. Compton?

Mr. Compton: Yes; I will give you copies in just a min-
180 ute, please.

(The statements referred to are filed herewith marked exhibits "C. B. C. B-1" and "C. B. C. B-2.")

Mr. Compton: This exhibit is a recapitulation of the movement in pounds of carload and less than carload shipments of articles in Classes C, D and F, from points indicated to local stations in the State of Georgia on the roads named—34 in number. The exhibit gives the name of each of the roads. This movement is for the month of August, 1908, from Nashville, Tennessee; Atlanta, Georgia; Columbus, Georgia; Macon, Albany, Valdosta, Dublin, Rome, Athens, and Montezuma, Georgia. It shows that for this representative month there was moved from Nashville in grand total to the local points on the roads named 839,720 pounds, while from the Georgia points named the movement was 6,116,779 pounds. It shows that Atlanta shipped three times as much business as Nashville shipped. It shows that Columbus, Georgia, shipped just 90,000 pounds of what Nashville shipped. It shows that Macon, Georgia, shipped nearly three times as much as Nashville shipped. It shows that Athens, Georgia, shipped more than three times as much as Nashville shipped. It shows that of the grand total of all
181 the business moved from ten points, Nashville shipped 12 per cent of the entire business.

Mr. Baxter: Into that territory?

Mr. Compton: Into the local points on the roads named, in Southeastern territory. This Exhibit B is supplemented by a recapitulation showing the condensed total of the business from Nashville, as compared with the movement from all the points, in grand total.

Examiner Drayton: Make it clear just what those percentages are.

Mr. Compton: In the first statement?

Examiner Drayton: Yes.

Mr. Compton: The percentages in the first statement are Nash-

ville to elsewhere. It shows the proportion that the movement in the carload and the less than carload bore to each other.

Mr. Watkins: Will you give us a copy of that recapitulation, too?

Mr. Compton: Yes, sir. The recapitulation shows the percentage that Nashville did in each commodity as compared with the percentage that was done by the nine jobbing centers in Georgia in
182 each commodity, separate, and the percentage in grand total.

Examiner Drayton: When you say "commodity", you mean the commodity included within these classes?

Mr. Compton: The commodities included in these classes are the commodities complained of; that is, C, D and E. C is flour in sacks, D is grain and its products, and E is flour in barrels. These are the commodities that are complained of, and this statement is prepared for the purpose of showing to what extent Nashville is getting into the territory contiguous to the Georgia jobbing centers.

Mr. Baxter: Then, it is a fact that complainants are now and have been in a position to compete on an equality with Nashville and other primary markets located at the Ohio and Mississippi River crossings and points from which rates are made with relation thereto, to the territory immediately adjacent to those respective points?

Mr. Compton: Yes, sir.

Mr. Baxter: Explain why complainants are enabled to compete on any equality with Nashville and said other primary markets.

Mr. Compton: Because the rates on grain and grain prod-
183 ucts to the merchants and dealers located at the jobbing centers in Southeastern territory are the same as the rates charged the Nashville reshippers and shippers at other primary markets, and because the through rates to local stations contiguous to and naturally tributary to each of such jobbing centers are made by adding the rates from the various Ohio and Mississippi River crossings to said jobbing centers to the local rates thence, so that the same through rates are available to the merchants and dealers located at the jobbing centers as are available to the merchants and dealers located at the primary markets of origin.

Mr. Baxter: Explain what is a primary market.

Mr. Compton: Well, a primary grain market is the town or city to which the grain is first shipped from the farm or small country town, and there concentrated for further distribution.

Mr. Baxter: State whether Atlanta, Macon, Columbus, Albany, Rome and Athens, Georgia, are what are known as primary grain markets; if not, why not.

Mr. Compton: No, sir; they are not primary grain markets. They are not located in a grain-producing territory. Primary markets, so far as business to the Southeast is
184 concerned, are the markets that I have already described at the Ohio and Mississippi River crossings, and at the Missouri River points, and at Nashville, Tennessee. Nashville, Tennessee, is in the category of a primary market. It has the same concentrating facilities as a primary market as the Ohio River points that I have mentioned. There is tributary to Nashville, the Cumberland River, the Ohio River bottom, Tennessee and Mississippi,

a vast amount of business in the shape of grain. Probably all the grain, however, is corn. There is a great deal of business also that is tributary, in wheat; but not to the same extent as corn. There is a large part of the business that is tributary to Nashville in the shape of oats. So it is perfectly safe and proper to state that Nashville is a primary market, just the same as the Ohio River points are primary markets, and its circumstance of location is different from the circumstance of location of the jobbing centers in Southeastern territory.

Mr. Baxter: State whether, in your opinion, reshipping privileges should be extended to Atlanta, Georgia, or the other Georgia cities, and give your reasons fully and in detail for any opinion you may express.

185 Mr. Compton: No, sir; because the allowance of reshipping privileges to Atlanta, Macon, Columbus, Albany, etc., would result in endless confusion and discrimination by enabling the merchants and dealers located at those points to invade the territory of the merchants and dealers located at all other jobbing centers and vice versa; and because it would entail on the carriers serving those cities largely increased transportation service without increasing compensation.

Examiner Drayton: We will now adjourn until tomorrow morning at ten o'clock. We will then meet in Judge Clement's room. This hearing room will be used for argument in another case.

(Thereupon, at 5 p. m., the hearing was adjourned until tomorrow, Friday, December 4, 1908, at ten o'clock, a. m.)

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Second Day.

FRIDAY, *December* 4, 1908—10 o'clock a. m.

The hearing was resumed, pursuant to adjournment, at 10 o'clock, A. M., in Commissioner Clements' room before Special Examiner Drayton.

Appearances, the same as yesterday.

C. B. COMPTON, resumed the stand for further direct examination.

Mr. Baxter: How long has elevation been allowed at Nashville?

Mr. Compton: About ten years. Elevation at Nashville followed the payment of elevation at other primary markets. Elevation has been paid at Louisville, Cincinnati, Henderson, Evansville, Cairo, Memphis, over a period of many years; it is also paid at East St. Louis; it is also paid at the Mississippi River, such points as Kansas City, St. Joe, Council Bluffs, Omaha, and it is also paid at

187 the Twin Cities, St. Paul and Minneapolis. It is paid at Peoria and Chicago, and in fact it is the custom to pay elevation at primary markets, for loading from the elevator to the car.

Mr. Baxter: State whether, in your opinion, the cancellation of reshipping arrangements at Nashville would be a benefit to the merchants and dealers located in the southeastern cities mentioned in the complaint.

Mr. Compton: I do not think it would.

Mr. Baxter: Why would it not?

Mr. Compton: Because the merchants and dealers located at the various Ohio and Mississippi River crossings would still receive the same rates, and would still compete on the same basis, because located at the interior jobbing center, as at present. There would be no change whatever in the rate from the Ohio River if it was withdrawn at Nashville. The only result would be the withdrawal of merchants and dealers located at Nashville from competition for sale of grain and grain products and hay in Southeastern territory, and to such extent would be detrimental to the interests at those points and to the merchants and dealers located at those points. They would have more or less competitive points to draw from.

188 There would be no change whatever in the rates from the Ohio River. It would remove one point of supply to the disadvantage of the direct shipper, and also to the disadvantage of the small dealer.

Mr. Baxter: State whether in your opinion the fact that the rates on grain and grain products from the Ohio and Mississippi River crossings and Nashville, Tennessee, and all other points of origin to points in Southeastern territory and between the points in Southeastern territory, apply on any quantity, and that there is no difference between the carload and less than carload rates on said article in said territory, results in an undue and unjust prejudice or disadvantage to the merchants and dealers located in said Southeastern territory.

Mr. Compton: No, sir; in my opinion it does not.

Mr. Baxter: Explain why, under the rate adjustment from Ohio and Mississippi River crossings and points north and west thereof to these certain Mississippi Valley points the rates and grain and grain products when in less than carloads are higher than when in carloads.

Mr. Compton: The reason that the rates when in less than carload lots are higher than when in carloads from the Ohio and Mississippi River crossings and points north and west to certain Mississippi Valley points, is because of the exceptional circumstances

189 and conditions of competition existing in connection with the movement of grain and grain products into that territory. The lines operating west of the Mississippi River carry lower rates on grain and grain products to Mississippi River points and interior Mississippi Valley points when in carloads than when in less than carloads, and the lines operating east of the Mississippi River are compelled to meet the competition of the west side lines, which competition is entirely beyond the control of the east side lines. It is for this reason that the rates on carloads are lower on carloads of grain and grain products to certain Mississippi Valley points. The primary adjustment of rates from the Ohio River to the Mississippi Valley points was any quantity, and was not changed and departed from until the competition of the west side lines compelled it.

Mr. Baxter: Explain why defendants do not establish higher rates on less than carload shipments of grain and grain products from

Nashville and the Ohio River and Mississippi River crossings an
points from which the rates are made with relation thereto, to poin
in Southeastern Territory.

Mr. Compton: Simply because the various southern rai
190 roads, after long years of experience, have found by actua
experiment that it is impracticable to establish a differentia
adjustment on those products in Southeastern Territory. It is
proposition of impracticability. The rates prescribed by classifica
tion in the States of Virginia, North Carolina, South Carolina, Geor
gia, Florida, Alabama, are any quantity. That is to say, the car
load rates and the less than carload rates as fixed by the Commission
of those States are the same. For that cause or for that reason the
impracticability of establishing a less than carload differential shows
itself. The change if practicable could only be made to apply on
interstate traffic; it could not in any case be made to apply on intra-
state traffic; or apply between any two points, or, to put it differ-
ently, to apply between any two points in any of the States that I
have named. It is the universal custom in the South and South-
east to apply the any quantity rate and that custom has prevailed
over a period of many years, and I am speaking now from my own
experience and knowledge as to that feature of the case.

Examiner Drayton: That is not confined to any junction points
or basing points; it applies generally?

Mr. Compton: It applies generally, yes sir. It is not de-
191 parted from in any of the States I have mentioned. It is
the custom and has been for years.

Mr. Baxter: Is it not a fact that under the present rules and regu-
lations and the adjustment of rates governing the shipment of grain
and grain products from Nashville and Ohio and Mississippi River
crossings, the small merchants and dealers at small towns and large
jobbing centers are free to purchase wherever they may desire on
practically equal terms at the primary grain markets, or flour mill-
ing points, or at the nearest interior jobbing center?

Mr. Compton: Yes, sir; he can purchase wherever he pleases,
whether it be at the Ohio River, or whether it be at Nashville, or
whether it be at the jobbing point.

Mr. Baxter: State whether or not there are located in the interior
Southeast numerous and important flour and grist mills.

Mr. Compton: Yes, sir; there are numerous flour mills in the
South, located at Nashville, Tennessee, Chattanooga, and the follow-
ing points in Georgia, Atlanta, Augusta, Columbus, Macon, Carters-
ville, Adairsville, Calhoun, Dalton, Rome; Birmingham, Alabama,
and numerous other points. At each of these points I have named,
milling in transit is practiced.

192 Mr. Baxter: To whom do you say the mills sell the greater
portion of their flour and meal?

Mr. Compton: They sell it largely to the small dealer at the local
points.

Mr. Baxter: What, in your opinion, would be the effect upon
the business of these mills of the establishment of a differential
between less than carload and carload rates on flour and meal from
Nashville and Ohio and Mississippi River crossings, and points

from which the rates were made in relation thereto, to points in Southeastern Territory?

Mr. Compton: The milling in transit is practiced at the points I have named in the direction of the movement. In arranging for milling in transit we undertake to give the mill at the milling point the benefit of the same rate that is in effect from the Ohio River points. That is to say, by the milling in transit arrangement he gets the benefit of the through rate over the Ohio River at the date the reshipment is made from the milling point. The effect would be detrimental because since these flour and grist mills pay the same through rates on their in and out-bound shipments as are published from the Ohio and Mississippi River crossings to final destinations, the establishment of a differential would carry with
193 it the assessment of higher rates on less than carloads than on carloads as published from these crossings, and this would force the flour and grist mills to sell their product in greater quantities, depriving the mills of the privilege of selling to small merchants and dealers, which privilege they have now. It would compel the mills that now have these milling in transit arrangements applying any quantity to seek only the greater trade.

Mr. Baxter: What effect, in your opinion, would the establishment of such differentials have upon the business of small merchants and dealers at small jobbing centers and small towns?

Mr. Compton: It would be detrimental to those interests for the reasons I have just given. It would of course cause a discontinuance of the milling interests selling to the small points. Consequently it would have the same effect upon the small dealer, because the Southern flour and grist mills are only able to sell their products in greater quantities, and small dealers and country merchants would be deprived of the privilege of purchasing in small quantities from the flour mills, the people who manufacture the flour. The flour milling interest in the South is a very large one, and
194 a great deal of capital has been invested in the milling business. These flour mills cannot exist without milling in transit. They have got to buy their grain where it is produced, and it is produced in the North and shipped from the primary markets. They do not raise the grain where the mills are located in the Southeastern territory. Therefore without these milling in transit arrangements and the privilege of shipping to the various people who desire to sell, their interests would be seriously affected, in my opinion.

Examiner Drayton: If this rebilling privilege were abrogated at Nashville, these milling in transit privileges at smaller points in Georgia would also be abrogated, would they not?

Mr. Compton: Milling in transit and reshipping are very closely related. There is reshipping at the Ohio River crossings; there is milling at the Ohio River crossings. There is reshipping at Nashville, Tennessee; there is milling in transit at Chattanooga, Knoxville and Atlanta, points like that, but no reshipping. Nashville, Tennessee, being a primary market, it has reshipped grain that originates on the river and at the Ohio River, brought into Nash-

ville by rail. Nashville, Tennessee, is a seller of grain to t
195 miller at Atlanta. Nashville sells grain to the miller
Augusta, at Macon, and at Rome. He sells his grain in co
petition with grain from the Ohio River to the miller. The gra
sold by the Nashville dealer in competition with the Ohio Riv
dealer, the Mississippi River dealer, is milled in transit at th
through rate, from the Ohio River to destination. To destinatio
must be in a forward manner; that is, we do not mill back; w
mill forward. Milling in transit at Nashville is identical to th
milling in transit at Chattanooga and Atlanta. Of course she ha
a wider territory through which to distribute, for the reason that sh
is further back; she is a primary market, and back further nort
where the grain is raised, and she has more forward territory t
mill to than Atlanta would have. But the principle of milling i
transit is identical to all these milling points.

Examiner Drayton: So that even if this rebilling privilege were abrogated at Nashville it would still leave the milling in transit privilege?

Mr. Compton: Yes, sir; they could not stop milling in transit at Nashville without destroying the property at Nashville. The mill-
ing interest at Nashville is certainly the largest in the South,
196 by far. The milling interest at Nashville at one time was
quite as large as it was at Louisville. It exceeded the milling interest at Louisville. At one time I think it exceeded the milling at St. Louis—I am not sure about that. But Nashville, Tennessee, has been one of the largest millers of food products in the United States. I do not know of anything east of the Mississippi River or south of the Ohio River that is greater in milling capacity than Nashville. I do not know anything in the State of Ohio that has any greater milling interests than Nashville. I am speaking now of one town.

Middle Tennessee is a large wheat growing section, and Nashville is in the middle of this section, and a very strong primary market. The mills in the South use largely Tennessee wheat. They use largely of the wheat brought in from Kentucky. The mill at Knoxville, Tennessee, is a very large mill and draws its grain largely from eastern Kentucky, in the vicinity of Lexington, which is a very fine wheat country. It mills the grain at Knoxville at the through rate from the point of shipment to the point of destination. Atlanta, Georgia, does the same thing, and so does Chattanooga, Sweetwater, Tennessee, Adairsville, Georgia, Atlanta,
Macon and all these milling points which have the same
197 privilege that they have at Nashville.

Mr. Baxter: Perhaps you have already stated it before, but is it not a fact that the rates and classifications prescribed by the railroad commissions of the States of Georgia, Alabama, Florida, South Carolina, North Carolina, and Virginia provide for any quantity rates on grain and grain products?

Mr. Compton: Yes, sir; the classifications of those States are so issued by the commissions' authority to apply any quantity.

Examiner Drayton: Those commissions held hearings with a view to making such an order?

Mr. Compton: Oh, yes. They prescribe the classifications and the rates in those States. I do not know that this question has been up lately with any of the State commissioners or not, but it is absolutely impossible to change one of these rates without the authority of the State commissioners in any of the States I have named. It cannot be done.

Examiner Drayton: What did they adopt as the measure of the any quantity rate? Would they average it in carload and less than carloads?

198 Mr. Compton: The any quantity proposition in the Southeastern States on food products has given the Southern lines a great deal of concern in times past, over a period of years. These rates on food products were made any quantity many years ago and have been continued that way ever since. Those rates are believed by the railroads to be reasonably adjusted as to application by classification, which makes the rate any quantity. This is a classification proposition. No doubt it has merit. If it was not meritorious, it seems to me it would not have been adopted by Virginia, North and South Carolina, Georgia, Florida and Alabama. Certainly all the railroads and all the States were not wrong. There must be some merit in their idea.

Examiner Drayton: Is the same sort of a basis in vogue in any other territory than the Southeastern?

Mr. Compton: In the Middle States, that is, the States where the Trunk Line Classification applies, the rates are higher for less than carloads than they are for carloads. Likewise in the Western Territory.

Examiner Drayton: Were there any different considerations which could make this expedient in the Southeast and not in that territory?

199 Mr. Compton: The Southeast has its peculiarities in this way: The jobbing centers in the Southern States are located at the headwaters of navigation; that is to say the headwaters of the streams which served the towns before the railroads were built. The cities of Wilmington, Charleston, Savannah, Jacksonville, on the Atlantic Coast, and Mobile and New Orleans on the Gulf; the Ohio River points, Louisville and Cincinnati, were important jobbing points or trade centers before railroads were constructed. Nashville was likewise a very important trading point. The location of the interior cities was at the headwaters of navigation of these streams, such as the Savannah River, leading from Augusta, Georgia, to Charleston, and therefore on which Augusta, Georgia, is located; Macon is located on the Ocmulgee; Atlanta, Georgia, is located at the head of the Chattahoochie River; likewise, Montgomery and Selma, Alabama, are located on the Montgomery River, these being points that are located on navigable streams, with the exception of Atlanta. The Atlanta adjustment was made, and Atlanta became important where the railroads met, where the railroads from the East and the railroads from the West met. Atlanta was made a jobbing point and given the benefit of competitive rates
200 necessitated by the competition which showed itself at such points as Augusta and Macon on the south, Chattanooga on

the west, and Montgomery and Selma on the southwest. These jobbing points have served this southeastern country mostly with their products for many years. The necessity for the less than carload rates came into existence because of this competition on these navigable streams. For that reason the any quantity basis on these food stuffs was applied and has been continued over a period of many years. The same principle of classification was adopted by the various States that I have named.

Examiner Drayton: Were the any quantity rates put in by the railroads first and then adopted by some State or other; or what State did first make an order?

Mr. Compton: I cannot say definitely, but it may be that the roads adopted the basis first, and I think it is likely they did.

Examiner Drayton: In some territory, and then that necessitated its adoption, or at least in the opinion of some State Commission, necessitated its adoption in that State?

Mr. Compton: Yes, sir. I do not know the age or the life of these Commissions. Certainly the railroad commissions
201 have followed the railroads. They came in later. As to the time of the adoption, I am inclined to believe that it was adopted by the railroads first. Certainly it seems to me that a system of rate construction by classification making an any quantity basis having been applied over a period of years (a long period of years, you might say a lifetime), and States having rate making authority having adopted it, this is a good and proper plan for constructing rates, and shows conclusively to my mind that it had merit.

Examiner Drayton: If one State adopted that system another State would be pretty apt to follow it, simply for that reason?

Mr. Compton: Well, they seem to have done that in classifying these food products. The classifications of the States I have named are different from each other in some particulars. They are different in some particulars from the Southern Classification which is generally applied south, but here is a case where they all classify alike—in all the States I have named.

Examiner Drayton: Do you know of any State in Central Freight Association territory which has made a similar order on any quantity rates?

202 Mr. Compton: No. I do not desire to be misunderstood as saying that any of the State Commissions having jurisdiction in the States I have named made an order that we do this thing. I cannot say that this is their ruling. This is their classification. I do not mean to say that they came out in a specific order and said that this should be done. I do not understand, or do not know that I have ever heard of a complaint to a State Commission that their classification of food products was wrong. These gentlemen have the privilege of going to the State Commissions to show that their classification is wrong; but whether they have ever been there or not, I do not know. But certainly it is open for them to do so.

Mr. Wimbish: Take up the more important question, Mr. Compton, and then take care of the States later.

Mr. Compton: I am explaining as well as I know how this situation. It is up for decision by the Commission, and I am trying in the best way I can to explain the conditions in the South, just to try to give the facts.

Mr. Wimbish: You are doing it very interestingly and very fairly.

Mr. Compton: Thank you.

203 Mr. Baxter: I will ask you if, as a matter of fact, your road did not at one time try to establish a differential, and what was the result of that effort on your part?

Mr. Compton: In December, 1897, after two or three years of discussion on the subject, the railroads in the South concluded to give this a trial. The rates were put in effect, I think it was December 14, 1897, and they remained in effect until about the 1st of February, I think February 10. During that time I do not suppose there was ever such a chaotic state brought about by a change in rates. The inconsistencies, the discriminations, the complaints from the small dealer, and also from the wholesaler himself, who wanted this thing done were such as to necessitate a restoration of the previous basis. The whole system of rates was in a chaotic state. They thought that this would be a good thing and the railroads thought they would give it a trial, and the wholesalers threw up their hands before anybody else did.

Mr. Wimbish: What wholesalers threw up their hands?

Mr. Compton: The wholesale dealers of the Southern States, the Southern Wholesale Grocers' Association.

Mr. Baxter: Then you established the present adjustmen-

204 of rates at the request of the wholesale associations and other requests from merchants in that section of the territory?

Mr. Compton: There was no change made between points within he State where the classification was fixed by the State. The hanges were of course in interstate business where the railroads ad no authority to change. But the result was not satisfactory to nybody.

Examiner Drayton: Can you just give us the reasons?

Mr. Compton: I cannot give you the reasons other than I have iven them, except that it brought about such a condition that obody was satisfied with it. They threw up their hands.

Examiner Drayton: Would the fact that the any quantity rates pply to intra-state points, and that these other rates applied to in-rstate, bring about that chaotic condition?

Mr. Compton: Yes, sir. For instance, I will give you an example. o make by classification a higher rate on the less than carload than n the carload, would compound. It will compound the interstate rates in this way: Take a shipment to a point like Augusta.

05 If this change was made by an advance of 4 cents per hundred pounds or five cents per hundred pounds to Augusta n the less than carload shipments—assume that the rate today is) cents, simply for illustration. That would make the less than rload rate 25 cents. The rate from Augusta to a point in South arolina would be interstate, and mind you, you cannot change a

state rate. You add five cents onto the present State rate and y
get ten cents from the Ohio River. That is what I say is co
pounding. To the State point, if the rate was advanced on the l
than carload, five cents a hundred, it would simply advance t
rate five cents. It would not compound in that case, because the
would be no change of the rate in the classification from the Sta
point to a State point, but wherever you are near a State line lik
Columbus, Georgia, or Chattanooga, or Eufaula, wherever the inte
state rates from the Ohio River or Nashville were made differe
from the carload rates, there would be a compound differential.

Mr. Baxter: Would not that amount to a preference in favor
the intrastate shipper as against the interstate shipper?

Mr. Compton: Yes, sir; I think it would.

206 Mr. Baxter: And practically drive all interstate competi
tion out?

Mr. Compton: Yes, sir; he could not cross the State line unles
he paid an extra charge for it.

Mr. Baxter: What, in your opinion, would be the effect upon th
dealers in grain and grain products at Nashville if the prayer o
the petitioners in this case was granted?

Mr. Compton: The effect would be that the dealer at Nashvill
would have to retire from business. He would be excluded, and to th
extent of his exclusion he would be damaged? He would not b
as he is today in a relative position to the Ohio River, but h
would have his business destroyed.

Mr. Baxter: State whether in your opinion the defendant's an
quantity rates on grain and grain products applying between th
Ohio River and the Southeast gives to Nashville any undue or un
natural advantage over complainants, and give your reasons fully
in detail for any opinion you may express.

Mr. Compton: The present arrangements in effect will simply
give to Nashville the same through rate that is given shippers
207 at the Ohio River. Through the contiguous territory sur
rounding these jobbing centers the rate is identically the
same to him as it is to the Ohio River shipper and the Nashville
shipper. Consequently they are all on a parity. There is no dis
crimination in favor of Nashville or in favor of the Ohio River or
in favor of the Georgia shipper. He is on a parity to these points
located in this contiguous territory. The only difference, if there is
a difference, would not be due to any adjustment of the rates by the
railroad company. The transportation charge by tariff is the same.
I am speaking now aside from any expense that anybody has at any
point, whether it be at the Ohio River, at Nashville, or at Atlanta,
Chattanooga, Montgomery or Birmingham. I speak now with
reference to the transportation charges, and they are identically
alike, and hence there is no discrimination.

I want to say in connection with that matter that there are no
privileges given to Louisville or to Nashville that are not given to
Birmingham, Montgomery and Atlanta. We have no free-time
arrangement with anybody at any point. The railroads require the
discharge of the cars just the same at Nashville that they do at

Atlanta. If there is any free-time it is not paid for by the
208 railroads, and there is no compensation for it. I want to say also that there is no charge absorbed or paid by the railroads for sacking grain.

Examiner Drayton: What is the ¾ cent charge?

Mr. Compton: That is elevation. That is paid when the shipments are made and paid only when shipments are made and not when they are received. Also with respect to the elevation at Nashville that is paid on the outbound business only, and then it is paid only when it has not been paid previously at the Ohio River or St. Louis.

Mr. Baxter: Is not that same elevation charge made at other Ohio River crossings?

Mr. Compton: It is paid, yes, sir.

Mr. Baxter: Nashville would have no advantage in the way of elevation over any of those other points?

Mr. Compton: Not the slightest.

Mr. Baxter: Or over any other primary market?

Mr. Compton: Not the slightest; no advantage whatever.

Mr. Baxter: What would be the result on the business of the wholesale dealers and merchants located at interior jobbing cities if the defendants should be compelled to create the adjustment of rules and regulations asked for? I believe you have stated
209 that, but I wish you would restate it.

Mr. Compton: The result would be to give to the large dealer and the merchants a decided advantage on all business done in grain and grain products in their own towns and at the contiguous points, when in the same State, and would deprive the merchants and dealers located at primary markets of origin, at Ohio and Mississippi Rivers, at Nashville and beyond, of competing on equal terms for the business in these towns proper and points contiguous to them, and would also deprive the smaller dealers in the cities and towns of competition which they now enjoy. It would, however, be detrimental to the extent that the wholesale dealers and merchants could not compete except in their own States; and on business which they might desire to do in other States, they would be compelled to pay higher rates on less than carload business than the merchants and dealers located in some other States would be compelled to pay, because the differential adjustments cannot be made on intrastate business; it could only be made on interstate business. Those State adjustments are immovable.

Mr. Baxter: What would be the result upon the whole-
210 sale merchants and dealers located at primary markets if the defendants would be compelled to create the adjustments of rates, rules and regulations asked for in the petition?

Mr. Compton: The result would be detrimental to the business of the wholesale merchants and dealers located at the primary markets, and also to the mill people who grind the flour. They could not supply the trade, and it would prevent wholesale dealers and merchants from competing on an equal basis for the sale of their commodities in less than carloads to Southern territory, and

would restrict them to the sale of carload quantities only to such as are able to buy in carload quantities.

Mr. Baxter: State whether in your opinion the defendant's any quantity rate on grain and grain products applying to these points in controversy unjustly discriminates against any point or points in Southeastern territory, and particularly in the State of Georgia, and give your reasons fully and in detail for any opinion you may express.

Mr. Compton: I think there are no inequalities in these rates under the conditions I have named, due to the existing classifications as applied in the various States, necessarily compelling
211 the application of the same basis of classification on interstate shipments; that no harm or injustice is intended or is done. These freight rates as they are now adjusted are the result of years of experience and have resulted, in our opinion, in much good. Certainly, on the whole, the communities have prospered. I do not know under the circumstances how it would be possible, without causing dissatisfaction and discrimination, for this thing to be changed. Hence I think that on the whole the basis is reasonable both to the shipper and the primary markets, Nashville, Tennessee, Chattanooga, Atlanta, Augusta, and Macon, Georgia, and Birmingham, Montgomery, Selma, and even the coast points—on the whole it seems to me that it is the best we can do, and it is reasonable.

Mr. Baxter: Have you caused to be prepared a memorandum of information contained in the annual report of the chief engineers of the United States Army for the year 1905 with respect to the Cumberland River, and if so file it as an exhibit to your testimony, and explain briefly what it is.

Mr. Compton: Yes, sir; I will file this as Exhibit Compton
212 C." This is a synopsis of information contained in the annual report of the Chief Engineers of the United States Army for the year 1905 with respect to the Cumberland River. This is presented for the purpose of showing that the Cumberland River is a river, and it has to be reckoned with in the adjustment of rates.

(The memorandum referred to was received in evidence and marked "Compton C.")

Mr. Baxter: On yesterday I failed to ask you why you selected the month of August as an illustration of the movement of traffic into that territory for Nashville, and also for Atlanta and other Georgia points; is August a fairly representative month?

Mr. Compton: The reason why August was used was this: We were given 15 days to file our answer in this case, and the notice to prepare such answer came to us from the Secretary of the Interstate Commerce Commission, Mr. Moseley, under date of August 25, 1908. The answer was prepared and we immediately set about to have the statistics prepared for the month just before, which was August, August is a representative month.

213 Cross-examination:

Mr. Wimbish: Would not May be a much more representative month?

Mr. Compton: I do not know. I do not think so. Food products move the year around.

Mr. Wimbish: Does not Nashville sell a great deal more in May than in August?

Mr. Compton: I am sure I do not know.

Mr. Wimbish: Then you do now know whether May would be a more representative month or not?

Mr. Compton: It might, and it might not. I say that August is a representative month.

Mr. Wimbish: Have you any reason for saying that August is a representative month, any other reason than that it is one of the twelve months?

Mr. Compton: That depends, I think, on what you mean. I will try to explain. I am going to give you a frank answer.

Mr. Wimbish: I expect that from you.

Mr. Compton: The movement from the various shipping points to the Southeast is not uniformly the same. What I mean
214 is that January is not the same as February and February is not the same as June, and June is not the same as December, so far as the movement is concerned, one point as against another during that period—if that is what you mean. I do not know of any reason why the relative movement is not the same. I admit the movement is not the same each month, because in the summer there will not be as much corn moved for the reason that they have more grass and use less feed stuff for the animals. As to the proportion that moves each month, I think they are about the same.

Mr. Wimbish: All I want to know is whether you selected August as being a representative month or any particular reason, or whether you generally selected it as being one month of the twelve; and I want to ask you if it is not true that the sales of Nashville to the Southwest during the month of August are not below the average for the year, not only in last August, but generally for that time of the year?

Mr. Compton: You mean below the average?

Mr. Wimbish: For the year; yes, sir. In other words, if it is below the monthly average for the year.

Mr. Compton: I have not anything to compare with it.

215 Mr. Wimbish: Then you do not know whether August is or is not a representative month?

Mr. Compton: I will say this, that Nashville's relative movement is practically the same for each of the months. Likewise I could say that the movement to the jobbing points is in about the same relation. It is true there is a difference, that in some of the months the business is larger, but the relative movement is the same.

Mr. Wimbish: The statement you prepared and submitted shows simply the movement to the local points contiguous to particular jobbing centers as you call it, and does not include the movement from Nashville to junctions or common points?

Mr. Compton: Oh, no.

Mr. Wimbish: Simply to the local points?

Mr. Compton: It shows on its face what it is.

Mr. Wimbish: I understand. I only wanted to bring it out clearly. You said that Nashville can ship to East Point cheaper than Atlanta can?

Mr. Compton: It is very easily explained. East Point is really a suburb of Atlanta. Atlanta calls it so herself. The rates from the west to East Point are made the same as to Atlanta. They
216 are made so from the Gulf.

Mr. Wimbish: That is the fact?

Mr. Compton: The rates are the same to East Point as to Atlanta.

Mr. Wimbish: Nashville can ship into East Point cheaper than the Atlanta merchant can over the Atlanta combination?

Mr. Compton: No, sir; Nashville cannot ship in any cheaper than Atlanta can.

Mr. Wimbish: Very well. We think it can.

Mr. Compton: If you want to ask the question if the combination on Atlanta to East Point is greater than the through rate from Nashville, I will tell you it is.

Mr. Wimbish: Yes; we know that. Now, the Georgia Railroad Commission issued its first schedule, I think, in 1887. These any quantity rates on grain and grain products were enforced by the railroads prior to that time?

Mr. Compton: I think so.

Mr. Wimbish: Is it not true that North Carolina, South Carolina and Alabama through their State Commissions have simply taken the Southern Classification, and have no classification of their own with respect to grain and grain products?

217 Mr. Compton: Alabama adopted the Southern Classification as in existence at the time of the act creating the new commission was passed; as to North Carolina, I do not know.

Mr. Wimbish: And South Carolina.

Mr. Compton: As to North and South Carolina, I do not know whether they have adopted those classifications or whether the order issued was their own.

Mr. Wimbish: I simply wanted to know if you knew that to be a fact. Do not the railroads give rates establishing a differential between carload and less than carload on interstate shipments on such commodities where the State Commissions recognize no differential?

Mr. Compton: I think so.

Mr. Wimbish: Is not that true on sugar and molasses?

Mr. Compton: So far as the Southern Classification is concerned, the classification provides that on sugar and molasses, the rate shall be the same any quantity. It is true that there is a commodity rate in from New Orleans to Atlanta.

Mr. Wimbish: And also from New York?

Mr. Compton: Yes, sir. And that occurred by a competi-
218 tive condition which brought it about. The classification of the Louisville & Nashville Railroad is any quantity.

Mr. Wimbish: What is peculiar about grain and grain products that you cannot adopt rates as the rest of them?

Mr. Compton: There are certain peculiarities, and I will endeavor to explain it.

Mr. Wimbish: Wherein would the establishment of the differential prayed for in this complaint be any more impracticable because the difference is not recognized by the State Commission—that in the case of sugar?

Mr. Compton: You are speaking about figures. There are some other things to consider also. We cannot change the rates in the individual States. If we change by classification it would advance rates from Chattanooga to all points in the South. It would advance the rates from Rome, Georgia, to all points in North Alabama.

Mr. Wimbish: Is not that true of sugar, as much so as grain?

Mr. Compton: It would create an advance or a double advance in interstate rates. As to the sugar to Atlanta, and I think some other points, there is a commodity rate on sugar, carloads, and I think the classification provides any quantity.

219 Mr. Wimbish: You speak of compounding the differential on interstate rates, and you gave an illustration of Augusta selling into South Carolina?

Mr. Compton: Yes, sir; and I gave Columbus and Eufaula on the west.

Mr. Wimbish: Any dealer in Augusta buying flour where there was a differential would undoubtedly buy in carloads, would he not?

Mr. Compton: Yes, sir.

Mr. Wimbish: And when he shipped out there would only be one differential and that would not compound?

Mr. Compton: For him. But I said that the rate from the Ohio River would be compounded. I forgot something and I am glad you brought that up. That would destroy your mill in Augusta, and destroy your mill in Atlanta, and it would do a very great harm. I admitted that so far as the wholesaler at Augusta was concerned if he bought in at carloads and shipped out at less than carloads, he would have one advance, but I say the man at the Ohio River, his rate would be compounded, and the miller's rate would be compounded. Why? Because you protect the through rate on less than carload shipments, and the miller's rate would be com-

220 pounded, and he would bring his stuff in in carloads and ship it out at less than carloads, and his rate would be compounded.

Mr. Wimbish: Would it not be entirely practicable for a miller to make up a carload of consignments to various persons in the same town, shipping to one consignee and having him distribute it?

Mr. Compton: If he had enough trade to go to one town.

Mr. Wimbish: Would it not be entirely practicable if he had it?

Mr. Compton: If he had enough business to load a car, certainly.

Mr. Wimbish: In other words, he could concentrate his shipments to various consignors, billing them to one consignee?

Mr. Compton: You want me to say a miller can do business that way. I say it will destroy it. We have to protect the millers.

Mr. Wimbish: If those complications come about which you fear and which in your opinion will so disastrously affect those various

interests that appear here, how is it that this differential
221 exists in all other territory of the United States, without those things following?

Mr. Compton: I do not know. But I do not think that because they do something in Illinois we ought to do that thing in Georgia.

Mr. Wimbish: I wanted to see if you had any information on that line. Here is all the territory in the United States, except the Southeastern States, and one of the Southeastern States, Mississippi, if you call it Southeastern, having this differential.

Mr. Compton: I explained why Mississippi had it.

Mr. Wimbish: You fear to put it in for economic reasons as you have explained, and I ask you how and where that applies in the Southeast when it does not apply elsewhere?

Mr. Compton: I have explained it.

Mr. Wimbish: Very well. When you put in this differential and made the experiment, did your road put it into the Southeast? Did your road put in this differential that you mentioned as having been put in effect experimentally some years ago?

Mr. Compton: What do you mean?

Mr. Wimbish: I mean the Louisville & Nashville. Do they have any line, or did they establish differentials over any lines
222 into the Southeastern territory?

Mr. Compton: All the lines in the Southeast tried it. The Louisville & Nashville was one among the number.

Mr. Wimbish: Did you have any lines then to the Southeast?

Mr. Compton: Yes, sir.

Mr. Wimbish: You mean into Alabama. But did you have any into Georgia or the Carolinas?

Mr. Compton: No, sir.

Mr. Wimbish: You did not?

Mr. Compton: No, sir.

Mr. Wimbish: When you say that the wholesale merchants and the retail merchants threw up their hands and asked you to withdraw that, do you speak from any specific knowledge of your own, or are you repeating general rumors that you heard?

Mr. Compton: I dealt with that proposition all throughout.

Mr. Wimbish: Then who was it that asked you to withdraw those rates; name the person.

Mr. Compton: There was general dissatisfaction. There was dissatisfaction among the merchants and wholesalers and
223 dissatisfaction among the retailers. This was the result of a complaint by the Southern Wholesale Grocers' Association.

Mr. Wimbish: State what it was.

Mr. Compton: I will explain. At the head of this Association was Mr. Lea, who was President of the Wholesale Grocers' Association, having headquarters. His principal lieutenant was W. L. Vandiver, at Montgomery, Alabama.

Mr. Wimbish: Where was Mr. Lea?

Mr. Compton: Richmond, Virginia; and that organization, which was organized as the Southern Wholesale Grocers' Association, threw up its hands, through its President.

224 Mr. Wimbish: It did not do so through its directors or by any official action, did it?

Mr. Compton: I explained that complaint was brought through the officials of the Wholesale Grocers' Association. I do not know anything about the directors at all. I do not know who were the directors.

Mr. Wimbish: You dealt with Mr. Lea, the President?

Mr. Compton: No, sir, I did not have anything to do with Mr. Lee.

Mr. Wimbish: You did not?

Mr. Compton: No, sir.

Mr. Wimbish: Let me see if I understand your position with reference to Nashville. It seems to me that Nashville is entitled to rebilling because it is a primary market for grain.

Mr. Compton: You speak of rebilling or reshipping?

Mr. Wimbish: I am speaking of reshipping, whatever you choose to call it.

Mr. Compton: I call it reshipping.

Mr. Wimbish: And it is a primary market because of the Cumberland River?

Mr. Compton: Yes, sir.

225 Mr. Wimbish: Are there any reasons that will sustain reshipping at Nashville except that it is a primary market and is such a market because it is located on the Cumberland River?

Mr. Compton: Its location gives it what it has got. It is the location on the Cumberland River and competitive conditions at Nashville which compel this arrangement. I will say to you that Nashville enjoys no special privilege.

Mr. Wimbish: That is a matter that we will ask the Commission to rule on.

Mr. Compton: I want to say firmly that there is no special privilege granted to Nashville.

Mr. Wimbish: I want to get as clearly as I can why Nashville is entitled to a privilege that Atlanta and these other points do not enjoy.

Mr. Compton: The reason we give reshipping at Nashville is because we can't help it.

Mr. Wimbish: And the reason is because it is on the Cumberland River?

Mr. Compton: Yes, sir.

Mr. Wimbish: And that constitutes it a primary market?

226 Mr. Compton: Her source of supply is controlled by that stream.

Mr. Wimbish: There is no other reason you know of?

Mr. Compton: Yes, sir; she is a grain market, she is a primary market, and her location necessarily makes her a primary market, and she is entitled to all the considerations that a primary market is.

Mr. Wimbish: Why is not Chattanooga a primary market?

Mr. Compton: Chattanooga is in a different category entirely.

Mr. Wimbish: I wish you would explain to me how this reshipping privilege is operated. Suppose you take a car of grain,

that, we will say, moves from Louisville to Nashville upon a local bill at ten cents. Now that grain is put in an elevator and you cannot preserve the identity of the grain itself so that at any time within six months an equal amount of similar grain may be shipped or presented on the paid expense bill, can it not? There is no effort to keep the identity of the particular cars of grain?

Mr. Compton: You cannot keep the identity of grain in an elevator; it is lost.

Mr. Wimbish: In that connection, however, I understood you to say there is no allowance made for resacking.

227 Mr. Compton: I did, and still assert it.

Mr. Wimbish: I read from the tariff of the Nashville, Chattanooga & St. Louis Railway, Circular I. C. C. No. 1880-A, on grain in carloads drawn into Nashville, Tennessee, by Illinois Central Railroad, Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railroad from Ohio and Mississippi River crossings and beyond and at through public and private elevators for the reshipping of grain, and other concerns or warehouses having sacking facilities at Nashville, Tennessee, the Nashville, Chattanooga & St. Louis Railway will pay not to exceed three-quarters of a cent per hundred pounds elevation on such grain, etc.

Then Note 3: Elevation will be paid to public or private elevators and reshippers of grain handling business through concerns or warehouses having sacking facilities.

If that grain is taken to a warehouse and sacked and reshipped, is not that payment of three-quarters of a cent per hundred pounds made?

Mr. Compton: That tariff does not say pay for sacking; that tariff says they will pay for elevation. There are elevators in Nashville and warehouses in Nashville. Warehouses and elevators compete.

228 People having elevators and people having warehouses compete with each other for the sale of business in the South.

The man having the warehouse is granted the same privilege as a man having an elevator, and vice versa. It is elevation and not sacking.

Mr. Wimbish: Oh, very well. The charge is paid, although the grain may never go in an elevator.

Mr. Compton: Do not make me say that. You asked the question and I will answer it, but if you answer for me I do not concur at all. My answer is this: that there is no amount paid to anybody for sacking at Nashville. I say we pay for elevation at Nashville just the same as we do at Louisville, St. Louis and other places. We pay the man who has a warehouse, who is in competition with a man having an elevator, and vice versa.

Mr. Wimbish: Then I will ask you the question: Suppose this grain is taken to one of these warehouses having sacking facilities, and is resacked and shipped. Does that dealer get the three-quarters of a cent per hundred pounds?

Mr. Compton: If he does business in a warehouse, yes, sir.

Mr. Wimbish: Now, to get back to the direct question of re-

shipping, this grain is entitled to ten days free-time in
229 the elevator, is it not?

Mr. Compton: I do not know what the elevator arrangements are. I can tell you that no free-time is allowed by the railroads.

Mr. Wimbish: You mean on the cars?

Mr. Compton: Yes, sir.

Mr. Wimbish: But you say you do not know the rule that allows ten days free time in the elevator without storage charge?

Mr. Compton: No, sir; that is a commercial question and not a transportation question.

Mr. Wimbish: Suppose that the Nashville dealers should take this grain from Louisville and within the time allowed, within six months, they should tender you that car divided up into sacks, consigned to twenty or ten different consignees in the Southeast.

Mr. Compton: Yes, sir.

Mr. Wimbish: Now, what would he have to do to secure that reshipping? Would he send it out on another local bill or a number of local bills?

Mr. Compton: You want me to explain just how this re-shipping is done?

Mr. Wimbish: Yes, but I would like you to do it on
230 the line of my questions.

Mr. Compton: I understand. The carload of grain is brought into Nashville, say, from Evansville, Indiana. We will say it is thirty thousand pounds of corn. It comes to Nashville and the consignee pays the freight and raises the expense bill. The car is discharged into his ground. He can take that thirty thousand pounds of corn and sack it and ship it to your twenty consignees that you refer to and get three quarters of a cent per hundred pounds. Does that answer the question?

Mr. Wimbish: To that extent, it does. When he ships out he gets a local bill for each one of these shipments, local way bills out?

Mr. Compton: You mean he takes a bill of lading for the property?

Mr. Wimbish: Yes, sir.

Mr. Compton: The bill of lading shows that the property originated at Evansville, Indiana.

Mr. Wimbish: You do not refund anything in cash to the reshipper at the time?

Mr. Compton: You are figuring as to the settlement?

Mr. Wimbish: I am just speaking of the various steps.
231 To make it perfectly plain, suppose I come into the office of your agent at Nashville to reship to twenty different consignees, this car of grain which has been resacked at Nashville. What do I do and what do you do? What sort of bill of lading do you issue?

Mr. Compton: When the shipper desires to reship that grain, he takes the expense bill for the carload of grain to the agent. The outbound shipments are charged against that expense bill. He gets

a bill of lading showing the origin of the property at Evansville. He pays ten cents in—may I use Atlanta to illustrate?

Mr. Wimbish: Yes.

Mr. Compton: The rate is 17 cents from Nashville to Atlanta; it is ten cents from Evansville to Nashville. The combination on that bill therefore would be 27 cents. He is paid back three cents per hundred pounds in the final settlement.

Mr. Wimbish: You pay that back?

Mr. Compton: Yes, sir; we pay that back by voucher, by claim. He makes a claim for money and we pay his claim.

Mr. Wimbish: And you do that if there were twenty consignees instead of one? You would do that twenty times with re-
232 spect to each consignee?

Mr. Compton: We pay one claim. He makes one claim and the shipments show that he used up his thirty thousand pounds of corn. He used that bill to the extent that he shipped to these parties south. It is true there were twenty consignments in the case you illustrated.

Mr. Wimbish: What the Louisville & Nashville does under your rules is simply to protect the rate and refund to the dealer or shipper at Nashville the difference between the two locals that he has paid and the through rate?

Mr. Compton: Yes, sir.

Mr. Wimbish: And you do it through your claim department?

Mr. Compton: Yes, sir.

Mr. Wimbish: This expense bill when paid would be good to ship out any similar grain of course. Was there any trading of those expense bills in Nashville, so far as you knew?

Mr. Compton: Not to my knowledge.

Mr. Wimbish: Why would you adopt a rule forbidding trading in expense bills?

Mr. Compton: Why, we thought if we had reshipping arrangements there it would be reasonable for a shipper to use his own bills.

233 Mr. Wimbish: It was clearly practicable to trade in them, was it not?

Mr. Compton: I have no doubt that in times past expense bills of one consignee have been used by another. He would probably let the man have the grain at the elevator and ask for the bill at the time because it had a certain value. That was done at primary markets of reconsignment. The reshipping at Nashville is done identically the same way that milling in transit is done and milling in transit is done at Nashville like it is done at Chattanooga and Atlanta.

Mr. Wimbish: Now let us take two shipments of grain. One we will say of Texas oats coming through Memphis gateway, into Nashville, and another of northern or western oats coming through Louisville gateway into Nashville. The Memphis local to Nashville is eleven cents, is it not?

Mr. Compton: I think so.

Mr. Wimbish: And the Louisville local is ten cents?

Mr. Compton: Eleven cents from Memphis and ten cents from Louisville.

Mr. Wimbish: The through rate from Louisville to Atlanta is twenty-four cents?

Mr. Compton: Yes, sir.

234 Mr. Wimbish: From Memphis to Atlanta the rate is 20 cents?

Mr. Compton: Yes, sir; four cents less than Louisville.

Mr. Wimbish: Suppose the dealer should sell the Memphis car locally in Nashville or make some other disposition of that car of oats. Suppose he would substitute the Louisville car on the Memphis bill and he would then get that car moved from Louisville into Atlanta on the Memphis rate of 20 cents a hundred pounds, would he not?

Mr. Compton: No, sir.

Mr. Wimbish: Why not?

Mr. Compton: Because he would not.

Mr. Wimbish: Explain why.

Mr. Compton: In the first place the grain is entitled to transportation, and transportation is given on the grain. The shipper is not entitled to anything. The grain is entitled to the rate. The grain pays the rate. It is the old question of manipulation by the exchange of expense bills or the consumption of property at the reshipping point due to the fact that there may be a surplus of bills. That is the point you are after, I suppose.

235 I will say this to you: The Louisville & Nashville Railroad has no arrangement at the Ohio River or at Nashville whereby it will permit the mis-use of a bill or the manipulation of a rate.

Mr. Wimbish: How could you help it?

Mr. Compton: In the case you illustrate, in the first place, Texas oats and northern oats are two different things. There is as much difference between Texas oats and Illinois oats as there is between wheat and oats. Those are rust-proof oats. I do not know whether Nashville buys any; certainly it is not necessary for Tennessee to plant any. The Southern States plant Texas rust-proof oats. I do not think that an Atlanta dealer or a Macon dealer would be very apt to buy Texas rust-proof oats on a Louisville expense bill.

Mr. Wimbish: I am just asking you, and I really want to get your best and clearest information on it. I want to ask you if that cannot be done and you can prevent it being done? You may say it cannot be done or may not be practical for some commercial reason. I am speaking now of it as a fact.

Mr. Compton: I do not believe that irregularities exist under this reshipping arrangement. Certainly you would give me credit for being careful enough with my business affairs to — ar-

236 rangements proper.

Mr. Wimbish: I do not mean to suggest directly or indirectly that you are, but I am confessing a situation here and asking you about that, whether it could be done and without your knowl-

edge. Other grain moves through Memphis besides Texas ru
proof oats, does it not?

Mr. Compton: Oh, yes.

Mr. Wimbish: Why could you not take other grain and make
substitution of it so that you could not tell whether rust proof oa
moved or some other oats?

Mr. Compton: Grain goes into an elevator and is put in the sam
bin, and its identity is lost. Wheat goes into a mill, several car
loads from as many different points and a lot of wheat is all put i
the same bin in the elevator. That is a mill elevator. It is wel
known, and it is a matter of public notoriety, that the wheat coming
from the different points is milled and shipped out until an expense
bill is filed and it is well known that we overlap from one mill
to another in milling in transit and reshipping in order that the
full value of the bill may be utilized. It is done by milling and
reshipping, and you cannot, so long as you conduct a milling busi-
ness, identify the grain after it has been put in the eleva-
237 tor.

Mr. Wimbish: So I thought.

Mr. Compton: That is true.

Mr. Wimbish: So that by the substitution of bills the Nashville
dealer can get a car of oats or grain from Louisville into Atlanta
at 20 cents a hundred pound or four cents a hundred pounds less
than the Atlanta man can on the direct movement?

Mr. Compton: No, sir. The Atlanta man pays the same rate
from Memphis to Atlanta that the Nashville man pays from Nash-
ville to Atlanta, and the Atlanta man pays the same rate from
Louisville to Atlanta that the Nashville man pays from Louisville
to Atlanta.

Mr. Wimbish: All right. Now we will take some other illustra-
tion. We will take the Carolina territories and deal with flour.
Take Abbeville, South Carolina, as a representative point there.
The rate from Louisville to Abbeville is thirty-eight cents, is it
not, the through rate, and from Memphis thirty-six cents?

Mr. Compton: I have not got the rates, but let us assume that is
so.

Mr. Wimbish: Those are correct, I think. Suppose the
238 dealer in Nashville should buy a carload of flour from Louis-
ville, or grain, and mill it into flour, that is immaterial—
and should also buy a carload of flour through the Memphis gate-
way. Suppose that you substitute the Louisville car on the Memphis
bill. You could then get into Abbeville at thirty-six cents a hun-
dred pounds or two cents less than the Louisville rate.

Mr. Compton: No, sir.

Mr. Wimbish: Very well. Now, the dealer in Nashville having
two cars of flour, one coming from Memphis at the eleven cent local
and one from Louisville at the ten cent local, substitutes the Mem-
phis car on the Louisville bill, and he gets into Abbeville at thirty-
eight cents per hundred pounds; he then substitutes the Louisville
car on the Memphis bill and instead of sending that car to Abbe-
ville sends that to Atlanta at twenty cents per hundred pounds?

Mr. Compton: Excuse me. He is shipping the Louisville car on the Memphis bill?

Mr. Wimbish: Yes, and the Memphis car on the Louisville bill. I am using up both bills so that there will be no surplus bills. The Memphis car goes on the Louisville bill into Abbeville at thirty-eight cents, the Louisvile rate, and the Louisville car goes
239 on the Memphis bill to Atlanta at twenty cents per hundred pounds, the Memphis rate. That makes the combination of the two rates fifty-eight cents. If you ship from Louisville to Atlanta on the Louisville bill, the rate *is* twenty-four cents; if you ship the Memphis car through Nashville to Abbeville at the Memphis rate, it is thirty-eight cents, or sixty cents. By that manipulation can you not save both expense bills and also save two cents a hundred pounds on that flour?

Mr. Compton: No, sir.

Mr. Wimbish: Please explain it, and do so as much as you like.

Mr. Compton: I say to you that the amount of the grain shipped is the amount of the grain brought in, and the tariff rate is applied to Atlanta and Abbeville. I say to you that there is no manipulation.

Mr. Wimbish: And the dealer then at Nashville could not go into these territories at two to four cents per hundred pounds less than the Atlanta dealer?

Mr. Compton: There is no reshipping to Atlanta.

Mr. Wimbish: I mean on that through bill. I mean that the person in Atlanta makes a through bill.

240 Mr. Compton: We will quote the Atlanta people the same rate Louisville to Abbeville that we quote the man at Louisville, or the man at Abbeville, the same rate that we quote the man at Nashville.

Mr. Wimbish: The difference is this: If the Atlanta dealer buys a car of flour or grain at Louisville and one at Memphis he is obliged to ship through to Abbeville and to Atlanta on the original bill at the full rate. His Louisville car will cost him twenty-four cents. The car that he ships from Memphis to Abbeville will cost him thirty-six cents, so that the combination he pays for those two cars is sixty cents. The Nashville dealer with identically the same movement by a substitution of bills can get the Louisville car into Atlanta on the Memphis bill at twenty cents and the Memphis car into Abbeville on the Louisville bill at thirty-eight cents, or a total of fifty-eight cents?

Mr. Compton: No, sir; he cannot.

Mr. Wimbish: I think that is plain enough. We will not pursue it any further.

Mr. Compton: The man at Abbeville pays the tariff rate from the shipping point. The man in Atlanta does the same thing. It is true that the combination on Atlanta, Louisville to Atlanta
241 and Atlanta to Abbeville is higher than the through rate.

Mr. Wimbish: Are the present rates from Ohio and Mississippi crossings, Nashville, Tennessee, and points related thereto, to Southeastern territory, reasonable and just rates?

Mr. Compton: Mr. Wimbish, I have thought about that question.

In the case that was heard at Atlanta a short time ago complaint was made about the advance in rate of two cents per one hundred pounds. I thought it was reasonable to restore the rate from the Ohio River.

Mr. Wimbish: I am speaking of the advanced rates.

Mr. Compton: I understand, and I want to be very careful what I say too. I think the rates might reasonably be higher.

Mr. Wimbish: I would like to have a more direct answer to my question. You regard them as just and reasonable rates?

Mr. Compton: I regard them as reasonably low rates, but I think they might reasonably be made higher.

Mr. Wimbish: Well, being reasonable, even if reasonably low, then you regard them as compensatory?

242 Mr. Compton: Well, in what respect?

Mr. Wimbish: And a fair return for the service performed?

Mr. Compton: No, sir; I do not. I do not say that the business does not yield some profit, but I say that the business does not yield the profit that it should.

Mr. Wimbish: The advanced rate which is the present rate is an any quantity rate?

Mr. Compton: Yes, sir.

Mr. Wimbish: I would just like to have you answer, directly, if you will, whether that is fairly satisfactory and compensatory to you. If it is a reasonable rate such as you feel that you are justified in maintaining?

Mr. Compton: Mr. Wimbish, the heavy increase in everything enters into the cost of transportation on railroads in this country, and has advanced to such an extent that I think the rates generally ought to be higher. I do not think those rates yield a sufficient compensation. I therefore conclude that they might reasonably be higher. That is my reason. It is not based on this panic, either; it is based on performance for the last several years.

Mr. Wimbish: All right, then. I understand you now to

243 say that you think the present rates that we are discussing are not reasonably high, not fairly compensatory; is that right?

Mr. Compton: I said that I thought that they might reasonably be higher. Now I suppose that you would offer a five cent advance in less than carloads to accomplish the differentials; you may be trying to do that. But I am unwilling to say that I believe these rates are as high as they ought to be. I have tried to show, to give you my reasons why it would be impractical to separate the carload and less than carload rates.

Mr. Wimbish: I am not trying to mislead you in the least. What I want to bring out from you and get your opinion about is this: Whether the service you perform in the transportation of these commodities between the points we have named is fairly satisfactory and compensatory to you?

Mr. Compton: I do not think it is.

Mr. Wimbish: Then if it is not in your opinion, you are not getting enough on these any quantity rates?

Mr. Compton: We are not getting enough on any of the business, carloads or less.

244 Mr. Wimbish: Is there not a great difference in the cost of the service in carload lots and less than carload lots?

Mr. Compton: Generally speaking, yes, sir.

Mr. Wimbish: Does it do it in this particular case?

Mr. Compton: I think so.

Mr. Wimbish: What percentage of difference?

Mr. Compton: I do not know. I was for a time freight agent for the Louisville & Nashville at Louisville, and also at Birmingham. We are required to hold *our* handling cost down as low as we could, that is for labor and station expense. We made a point of that, to hold the expense at a proper level, on the movement of all freight in and out, of all character, the general run of business. I do not think I ever had a labor roll that exceeded a dollar, but put it at a dollar and a half as an outside figure——

Mr. Wimbish: I do not understand your reply.

Mr. Compton: You asked me what is the difference between handling. I am telling you about loading a carload of freight as it goes and comes.

Mr. Wimbish: What is the difference in cost?

Mr. Compton: You mean the difference between handling

245 a carload of freight and a carload of mixed merchandise?

Mr. Wimbish: I mean the difference in the cost of the whole service, between the same commodity shipped in carload lots and in less than carload lots to various consignees. You take into consideration the clerical expense, the expense we will say of twenty bills instead of one, with all the checking and rechecking, you take into consideration the cost of loading the less than carload cars whereas in the carload shipments the miller loads on his tracks; you take into consideration the greater exposure of packages of flour and things of that kind, damage by water and contamination than when in solid carloads, and the risk as it may otherwise affect less than carload quantities; you also consider that at every point of destination your car must be unloaded and twenty packages delivered, whereas in a carload lot it goes to a side-track or a team track and is unloaded by the consignee. All of those things considered and other things with which you are more familiar than I am, taking them into consideration, I would like to know if you are prepared to express what in your opinion would be a fair difference in cost between this commodity shipped in carload quantities and less than carload quantities.

246 Mr. Compton: The cost varies, of course. It is fair to say that it costs a little more to handle less than carload lots than it does to handle carloads at stations, but I could not give you the figures. I can give you an example where it costs no more to handle less than carload lots than it does carload lots.

Mr. Wimbish: No, I want to go on the average; I want your opinion.

Mr. Compton: I want to give you the reason I cannot tell you because I do not know.

Mr. Wimbish: Very well.

Mr. Compton: Suppose in handling a less than carload lot, as we do—this is by actual practice, Ballard's mill at Louisville, located on the Louisville & Nashville tracks, makes up a car for Atlanta and is distributed at Atlanta going to different points beyond Atlanta, so far as the Louisville & Nashville Railroad is concerned that is a carload of carload freight.

Mr. Wimbish: Certainly it is, and moves as a carload.

Mr. Compton: And moves as an any quantity rate. This car is consignee freight.

Mr. Wimbish: The question I asked you did not refer to
247 the rates. It referred to the cost of the service.

Mr. Compton: I understand what you say and I understand what I am trying to say, and especially so far as our company is concerned there is no difference in the cost in that case.

Mr. Wimbish: We agree on that. Of course you do not mean that there is no more clerical labor attached to it?

Mr. Compton: But if you had six consignments in it, you would have to make six items on your way bill, and if you had twelve consignments you would have to make twelve items.

Mr. Wimbish: When a consignee loads a car at the point of origin and you take it through as a car to destination, then of course from the cost standard that is greater. It may not matter how many packages there may be or how it may be filled. It is handled and its cost is exactly the same as a car that is moved under a carload bill, and that is not the point I am asking your opinion about.

Mr. Compton: You want to know how much more it costs for a bill clerk to bill six shipments than one?

Mr. Wimbish: I do not think I care to have any further answer from you on that point. When this grain that is shipped
248 at Nashville is purchased at the point of production or at the point of purchase or is received by you at the Ohio River, it goes on a local bill at Nashville?

Mr. Compton: Yes.

Mr. Wimbish: Is there any contract or agreement that that grain or flour shall move beyond Nashville?

Mr. Compton: No, sir.

Mr. Wimbish: None at all?

Mr. Compton: No, sir.

Redirect examination:

Mr. Lea: Referring to the elevation charges, three-quarters of a cent per hundred pounds, what is the object of that charge?

Mr. Compton: You are speaking about Nashville?

Mr. Lea: Yes, sir, and the other primary markets.

249 Mr. Compton: It was done originally to relieve the equipment promptly.

Mr. Lea: Certain questions have been asked you by Mr. Wimbish tending to show the abuse or irregularities that might exist in reshipping at Nashville. Do not the opportunities for this same irregularity exist at other places?

Mr. Compton: Yes, sir.

Mr. Lea: And the same would be true in milling in transit?

Mr. Compton: Yes, sir.

Mr. Baxter: I will ask you if it is not true that the object of the rule to prohibit manipulation of expenhe bills was put in after various roads had discovered it and that at certain places there had been such manipulations?

Mr. Compton: I do not know anything about that. Our rules at Nashville were put in to safeguard the reshipping arrangement and to protect the carriers. That is the object of those rules and regulations which were filed by the railroads.

Mr. Baxter: They are applicable to all points where the reshipping privileges are allowed; is that not so?

250 Mr. Compton: Wherever there is a stopping in transit of any character or reshipping or milling in transit arrangements, of whatever nature. It is published and safeguarded with the best safeguard that we can put around it and it is filed as a public document.

Examiner Drayton: What other safeguard is there than just simply prohibiting such manipulations? What happens to a shipper who does manipulate it?

Mr. Compton: If he is caught manipulating it, he is violating the law. I think that he would take a big chance, and I think, representing the carrier in the capacity I do, that I would be taking a pretty big chance. I will say to you I am not going to take any chance at anything of that sort.

Examiner Drayton: What I mean is do you take any steps to ascertain whether that is being done and to call attention to the fact that it is unlawful, and to prevent it?

Mr. Compton: The employés of our company have knowledge of the fact that there is a law. They have such instructions given them right along as will prevent their doing something other than that which they are authorized to do.

Examiner Drayton: And the expense bills show who
251 shipped the stuff in and they know he is not the man who is presenting it when that goes out.

Mr. Compton: The rules under which reshipping is done are set forth in the circular, and he is expected to hew to the line and do nothing else other than the schedules set forth. If he does it he does it at his peril. If a shipper does it he does it at his peril; but I do not think there is any chance for manipulation at all.

Examiner Drayton: Your inspectors have instructions to identify the man presenting the expense bill to see that he is the man shipping out?

Mr. Compton: Oh, yes, of course.

Recross-examination:

Mr. Watkins: How do you explain the fact that Nashville, Chattanooga and St. Louis Railroad has put in differentials to Georgia territory?

Mr. Compton: I cannot explain that; I do not know anything about it.

Mr. Watkins: You are not responsible for their acts?

Mr. Compton: No, sir.

252 Mr. Watkins: They have put in differentials to the territort north of Atlanta on the W. & A.

Mr. Compton: I do not know.

Mr. Watkins: Is there any particular reason why a differential could not as easily be put in on the line of some other road as on the line of the W. & A.?

Mr. Compton: I do not know that they are in.

Mr. Watkins: But the tariffs show they are.

Mr. Compton: I have not seen the tariff showing that; the only thing I have seen is the statement filed by Mr. Moore yesterday.

Mr. Watkins: Assuming that there are differentials on the W. & A. is there any reason why a differential could not be put in on another line, as easily as on the W. & A.?

Mr. Compton: I do not think, if it is true that those rates are in on the W. & A., that it would follow at all that it would be proper to adopt a differential basis.

Mr. Watkins: I did not ask you that question. I ask you if you can differentiate the W. & A. from any other road?

Mr. Compton: I have just done that by making the statement I did.

253 Mr. Watkins: Your statement is that that would not prove to you that the differential was proper, but would it not be the fact that if a differential is proper on the W. & A. it would be on any other road?

Mr. Compton: Not on the Louisville & Nashville; I will say to you I could not do it.

Mr. Watkins: Is not the Louisville and Nashville a joint lessee with the W. & A.?

Mr. Compton: No, sir.

Mr. Watkins: It uses the W. & A. tracks?

Mr. Compton: The Louisville & Nashville by an arrangement with the W. & A. uses part of that line between Cartersville and Atlanta to reach the city of Atlanta with its new Knoxville line.

Mr. Watkins: Is the L. & N. interested in any elevator at Nashville?

Mr. Compton: I do not know.

Mr. Watkins: You do not know that it is not?

Mr. Compton: I do not know that it is and I do not know that it is not. I think at one time a good many years ago we did have some elevators there. I am not sure and I do not know anything about it now.

254 Examiner Drayton: You said that the allowance of three-quarters a cent per hundred pounds was an elevation allowance and not an allowance for sacking?

Mr. Compton: Yes, sir.

Examiner Drayton: It is however allowed at the warehouse where there is no elevation service performed, is it not?

Mr. Compton: Well, it may be improperly named, Mr. Drayton. A warehouse performs the same function as an elevator performs. The elevator does not do anything but take the property from the car and put the property in the car. The first elevation arrangement I ever had any knowledge of was put in effect in Louisville, Kentucky, in 1873. At that time the Louisville & Nashville Railroad was a five foot gauge and the lines north of the river were four feet eight and a half. The cars of the southern lines could not run north nor could the cars of the northern lines run south. It was necessary to transfer the property or to hoist the car and take the trucks out and put under the body another set of trucks. The property was transferred, the trucks were transferred, and there being considerable expense attached to it, the parties built an
255 elevator there for the purpose of transferring grain from the narrow gauge cars to broad gauge cars. That is the way it started with us, away back yonder. It was a transfer elevator, transferring the property primarily. It was extended, but it did not extend to other points because it was done at Louisville; but probably went into effect at these places due to the necessities. It went into effect at Kansas City, Chicago, St. Louis, and in fact it is the universal custom.

I think you will find some recent decisions by the Interstate Commerce Commission in elevation cases. I think the Interstate Commerce Commission said that they ought to be discontinued. I think the Commission now has the matter under consideration, and I believe there has been an extension of time given for the railroads to be heard on that question. A good many people think it ought to be stopped, or to be discontinued.

Examiner Drayton: The mere purpose then of building an elevator is to facilitate the work which can be done in a warehouse; that is, it can be done more rapidly by an elevator?

Mr. Compton: Yes, sir; it has better means of doing it. You cannot protect grain without you have proper facilities. You
256 can turn grain in an elevator and keep it in good shape to better advantage than you could in a warehouse. An elevator is a necessity to the grain trade. I do not believe the western people could market their grain if the elevator system was discontinued.

Examiner Drayton: There is just one other question I would like to ask you. Mr. Wimbish had some difficulty in asking it first and as he is the author of it I do not know whether I will get it straight or not. It is in regard to the manipulation of expense bills from Louisville. You answered that that was not possible on a shipment to Abbeville.

Mr. Compton: Yes, sir.

Examiner Drayton: That is you mean if the Atlanta merchant purchases his grain at Louisville from which place the lower rate applies to Abbeville on other points than from Memphis, he would be on a parity, and the fact that grain is sent in and grain is sent out—that is, the points from which it is purchased—governs the total charge, and that most people buying from Louisville would

be in a parity for that reason, that they are charged the same rate from Louisville.

Mr. Compton (indicating on a map): Here is Louisville, Memphis, Atlanta and Nashville. A carload comes in from Louis-
257 ville and Memphis. Both cars sell to Atlanta. This car pays twenty cents to Atlanta, this car pays twenty-four cents; this man pays tariff to Atlanta, that man ships at tariff, and so does this man, and the man at Nashville.

Examiner Drayton: But there is a possibility of their exchanging the expense bills?

Mr. Compton: It does not make any difference if they do. The tariff rates apply. The grain has lost its identity and gone into the elevator.

Examiner Drayton: That is just the way I thought you answered. I just wanted to see the reasons.

Mr. Moore: Suppose the car from Memphis to Nashville was sold—he has a surplus bill; he has a car from Louisville to Atlanta. What would prevent him from substituting the car on the Memphis bill and getting a lower rate than the through rate from Louisville to Atlanta?

Mr. Compton: Has not the Memphis car paid the Nashville rate; has not the Louisville car paid the Nashville rate? His Memphis bill is not worth anything, or the Louisville bill, if he had sold the stuff.

Mr. Moore: I am taking it for granted that he has sold only one car, that is the Memphis car, locally in Nashville
258 Then he ships his Louisville car on the Memphis way bill and gets it in for twenty cents, when the rate is twenty-four cents.

Mr. Compton: The grain is entitled to transportation; the expense bill is valueless. It is the property that is entitled to transportation, and it is the property that receives the transportation. Reshipping is practiced at St. Louis, Louisville, Nashville, Cincinnati, Evansville, and so forth, and if the whole system is wrong all over the country it is wrong at Nashville. But it is not condemned and is still in effect.

Mr. Watkins: You contend that Louisville and Nashville have identically the same reshipping arrangements?

Mr. Compton: Do I say so?

Mr. Watkins: Yes.

Mr. Compton: In principle, yes, sir.

Mr. Watkins: Have you ever read the record in the matter of alleged unlawful rates and practices in the transportation of grain and grain products—the Kansas City case—in which this particular thing was condemned?

Mr. Compton: In the Peevy case?

259 Mr. Watkins: No, an investigation by the Interstate Commerce Commission into Kansas City reshipping; have you ever read that case?

Mr. Compton: No.

Mr. Watkins: I wish you would read it and see if you can find

any difference between the practices there condemned and the practices adopted at Nashville.

Mr. Compton: If the practice is wrong at Nashville it is wrong at St. Louis.

Mr. Watkins: It was condemned at St. Louis and Kansas City.

Mr. Compton: And if it is condemned and is wrong there it ought not to be put in at Atlanta.

Mr. Watkins: But if it is right there then it ought to be put in at Atlanta.

Mr. Compton: You said it was wrong.

JOSEPH A. MCCORD was called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

260 Mr. Watkins: What is your full name?

Mr. McCord: Joseph A. McCord.

Mr. Watkins: And you live at Atlanta?

Mr. McCord: Yes, sir.

Mr. Watkins: What is your occupation?

Mr. McCord: Vice President of the Third National Bank of Atlanta, Georgia.

Mr. Watkins: Have you made any investigations of the bank's clearings at Atlanta and Nashville for the last fiscal year?

Mr. McCord: Yes, sir; I made it this morning.

Mr. Watkins: Will you give the bank clearings of the respective cities for the last two years?

Mr. McCord: These figures are compiled by the Financial Chronicle of New York and used in the Treasury Department, in the office of the Comptroller of the Currency, as a basis. I went to the office of the Deputy Comptroller the other day, and obtained from that office these figures.

The clearings for the year ending September 30, 1907, in the city of Atlanta were $258,404,934. The clearings for the year ending September 30, 1908, in the city of Atlanta were $226,244,818, a decrease in the year 1908 over the year 1907, by reason of

261 the financial disturbances, of $32,160,116.

For the city of Nashville, Tennessee, for the year ending September 30, 1907, the clearings were $197,770,393; for the year ending September 30, 1908, the clearings were $174,546,683, a decrease attributed to the same cause, financial disturbance of the fall of 1907, the decrease amounting to $23,223,710. The difference of Atlanta over Nashville for the year 1908 was $52,000,000 in round figures, in favor of Atlanta.

Mr. Watkins: Did you make any investigation as to the bank capital at Atlanta and Nashville?

Mr. McCord: That I made hurriedly as my time was pretty much up when I had promised to meet here, but I have the figures—I would not swear definitely to the amount but I am within probably one hundred thousand dollars of the correct amount.

The capital of the active banks of Atlanta, according to the last published book report is $2,650,000, in round figures. The surplus of those banks is practically $3,450,000, making a total banking

capital for the city of Atlanta of $6,100,000. The total deposits, taking an average time in the year, sometimes it is less and sometimes more, but the average deposits for the year amount to $22,000,000.

262 In the city of Nashville, arriving at it by the same source—and by the way I take the American Bank Reporter as the basis and Credit Company of Chicago, hurriedly adding up the totals in round hundreds of thousands, of the active banks both of Atlanta and Nashville. The capital of the banks in Nashville is $3,252,000. Their surplus is $1,600,000, a total of $4,850,000.

I have no means of ascertaining their average deporits for the year, as I have those figured from the Atlanta Clearing House; but from the published report at one time given, it was practically $17,500,000.

Mr. Watkins: Those are all the figures you have?

Mr. McCord: Yes, sir.

(No cross-examination.)

Thereupon at 12:45 o'clock, p. m., a recess was taken until 1:45 o'clock p. m.

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After Recess.

The hearing was resumed pursuant to the taking of recess at 1:45 o'clock p. m.

H. F. SMITH, was called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Mr. Baxter: What is your name, Mr. Smith?

Mr. Smith: H. F. Smith.

Mr. Baxter: And your occupation?

Mr. Smith: Traffic manager of the Nashville, Chattanooga & St. Louis Railway.

Mr. Baxter: You have heard the testimony given in this case by Mr. Compton?

Mr. Smith: Yes, sir; I believe I have heard practically all of it.

Mr. Baxter: If you have anything in addition to what Mr. Compton has said, please state the material facts, of your own knowledge.

Mr. Smith: I will say that I concur in Mr. Compton's direct testimony. The answer of the Nashville, Chattanooga & St.

264 Louis Railway was a joint one, the conditions being substantially similar at Nashville, and counsel filed a joint answer, and therefore the testimony that Mr. Compton has given here, his direct testimony, has been discussed with him and reviewed, and so far as I have knowledge and belief is substantially correct and accurate, and I am prepared to confirm and concur in it. There are some opinions that Mr. Compton expressed that I am not qualified to concur in because of lack of knowledge. For instance, the capacity of the mills in various sections, and I am perhaps not as well informed as Mr. Compton with respect to the result of the trial

of the differentials a few years ago on the character of traffic under discussion. I am not sufficiently, or my recollection is not sufficiently refreshed, to enable me to confirm all Mr. Compton had to say with respect to that. Mr. Compton expressed the opinion on cross examination, or perhaps on direct examination, that the trade of the jobbers in this character of traffic at Nashville would be as I understood him wholly destroyed by the discontinuance of reshipping. I assume Mr. Compton meant the trade into the southeast or interior territory—Chattanooga and the South. Of course Nashville would enjoy a local trade in the immediate neigh-
265 borhood to a limited extent. It would, however, destroy Nashville as a primary market in a sense. It would make it impossible for Nashville to compete in territory you might say as local to Nashville, the producing territory, going west of the Nashville, Chattanooga & St. Louis Railroad, for instance, and on the connections of the Louisville & Nashville Railroad in western Tennessee and western Kentucky, where large and important crops of wheat are produced and more or less corn.

The present adjustment of rates from that district are, as I recall them, to make the rates from those stations not higher than from Cairo, to Chattanooga and points south. Should Nashville be unable to bring that grain into Nashville and reship it on a through rate it would modify the market of sale for producers in that section. Nashville being a natural market it would in a measure force those producers to find markets direct in the consuming territory, Chattanooga and south, or be compelled to employ some modified process for their produce, based on the fact that the rates into Nashville and the rates out would increase the through rate to some extent and in that way perhaps revert to the disadvantage of those particular producers.

Mr. Compton has made use of certain statistics compiled
266 with our aid. The movement in which our line participated during the month of August was furnished to Mr. Compton consolidated. The tonnage obtained from statistics of movement or performance of the lines directly interested included ours, and the question was raised as to why we selected August. My reply to that would be that that was the latest date. As a rule in preparing statistics it is our purpose and custom to take the latest available date, and that was the latest month on which statisics were available. Any other month for the purpose of our exhibit would have been just as satisfactory to us. As Mr. Compton truly stated the relative shipments from Nashville and these other points would not probably have been materially changed if some other month had been substituted. That is our belief. There was no idea of securing any advantage or submitting any statistical information that would be more favorable to the carriers or to the shippers of Nashville by selecting August. We had no such object in view, and I do not believe any such results have been obtained.

Mr. Compton I think has also very thoroughly described that Nashville is a so-called primary market. As he has stated and I

am trying to avoid much duplication now of his testimony,
267 Nashville was the first rail gateway from the west to the southeast, opened by the Nashville, Chattanooga & St. Louis Railroad in 1854. Steamboats from New Orleans, from St. Louis, from Pittsburg, Cincinnati and Louisville and perhaps from all of the western navigable streams, were to be seen in Nashville. I heard a few years ago Major Thomas make the statement before the authorities of the city of Atlanta, including the Mayor, that he has seen twenty-seven steamboats lying at the landing at Nashville. Major Thomas was for a number of years president of the Nashville, Chattanooga & St. Louis Railway, and from the early days of that road has been associated and connected with it. His statement will indicate to you gentlemen the importance of Nashville as a river point at that time. Of course that has been modified by the construction of railroads and the construction of bridges across the Ohio River making the through movement by rail practical, and the through movement of western traffic from beyond the territory of the Ohio and Mississippi Rivers and Cumberland river by boat impracticable to a certain extent. It was, however, a sufficient factor in its day to establish not only the basis of rates which has prevailed since but also to establish certain customs, and
268 one was this reshipping privilege. It was sufficiently powerful as a competitor to the rail carriers to warrant this system of reshipping at Nashville.

Now that has been in effect over thirty years, but as Mr. Compton has clearly stated was adopted for the sole purpose of enabling the lines between the Ohio River and Nashville to meet the competition of the Cumberland River to a reasonable extent. It has not eliminated that competition by any means but it has enabled the rail carriers to participate in a liberal way in the traffic particularly of this character.

As to the identity of grain, Mr. Compton has said that when the grain went in the elevators the identity was lost. That is not always true. I may be wrong, but I think I am correct; I know it to be true as to some elevator points. There are dealers, as I understand it, who have bins and they separate their grain. Sometimes you can preserve the identity, it is sometimes accomplished, but as a general proposition I assume it is not.

Something was said about so-called warehouses. We recognize any warehouse, not only at Nashville, but elsewhere, that handles grain in and out, handles it in in sacks and out in bulk, or in in bulk and out in sacks, as an elevator.

269 So far as the transportation conditions are concerned, it is substantially an elevator. It unloads the cars and loads the cars, and the facilities of those warehouses are used in such a way that so far as the carriers are concerned, they represent the same service and perform the same service as the elevator. Where grain is elevated by bucket and belts some of the warehouses had to be used and their facilities utilized by the carriers in spreading grain on the floors to be dried and saved from total damage or total loss by reason of heating. We find the warehouses, those that have

the capacity, very valuable aids in conditions of that kind, so that the warehouses, those that we recognize now as elevators, are as we believe justly entitled to practically the same consideration as the elevator.

Discussion was had this morning on the matter of elevation. I was in the service of the Ohio River railroads at the time elevation was first established, and it is my belief, and my recollection, that elevation was first made at Louisville. It might have been first made at some of the other Ohio River crossings, if the rail facilities had been the same at the time the allowance was first made at Louisville, but the reason it was made at Louisville was the ca-
270 pacity for transferring from western cars to southern cars on through shipments, we will say a carload of grain originating at some point in Illinois or Indiana, destined to Atlanta. The gauges of the railroads at that time were different. The contents of the cars had to be transferred at the Ohio River, and at one time all had to be wagoned across the river, ferried over. The building of the Louisville bridge, which occurred probably in 1869 or 1870, brought those northern cars to the Louisville terminals of the Louisville and Nashville Railroad; but as stated the gauges were different. Those northern cars could not proceed south over the Louisville & Nashville road, that line being the only line into Louisville at that time. There was no line south of Cincinnati, further than Lexington, we will say, the Kentucky Central. The Louisville & Nashville in connection with the Nashville, Chattanooga & St. Louis Railroad formed practically the only direct route from that section to Chattanooga and the southeast.

Now, some means of transferring bulk grain from the northern cars to the southern cars had to be devised, and elevators were constructed. The first public elevator company, I believe, was called the Kentucky Private Elevator Company. A large public elevator was employed, and perhaps others, having facilities to trans-
271 fer grain from northern cars to southern cars, and this allowance was made for that purpose. That was continued when grain shippers and grain dealers performed the service themselves; that is, they had grain consigned to themselves from the north. It was switched to their elevator or elevators, in which they had rented bins, and by rental arrangement had elevator service performed for them. They performd this service for themselves, and I am correct I think in stating that for a period at least the elevation was paid to the shippers. That I believe was several years ago discontinued, the payment being made to the facilities or the organization that performed the service; but the elevation was allowed. Now that was an advantage that could not be confined to Louisville or the Louisville gateway properly. The necessity for transferring grain from a northern car to a southern car was modified by change of gauge and the consequent ability to run these cars through; it being physically possible to run the cars through, though, did not always result in their being permitted to run through. The owners of cars in some cases, due to a condition of scarcity of cars, would not let their cars go south. That transfer

then had to be still accomplished; and where there was a through bill of lading and this transfer had to be made we paid this
272 allowance of three quarters of one cent per hundred pounds.

The allowance being made at Louisville, it was contended at other points similarly situated along the Ohio River, including Memphis, that they must be aided to that extent in the meeting of that expense incident to the handling of grain through an elevator; and it has grown into a custom and it has spread. Whether it was inaugurated in Louisville in advance of some of the westerly or more northerly points, I am not certain; but Louisville was the first of the cities south of the Ohio River to establish this allowance. Now that has been extended to other Ohio River points and to St. Louis. I mention those points, because those are the only points in which the southern lines have an interest or participate in the payment. That is, beyond that we have nothing to do with it and do not participate, and it does not come out of our rate or out of any proportion of it. Where service is performed on the Ohio River and at East St. Louis on business destined to Nashville and the south the elevation is paid or participated in by lines south of the river. The elevation allowance at Nashville was not inaugurated until perhaps some time after it had been in effect at other points, long after it had been in effect at Louisville. It was found, however, that
273 to place the dealers or primary markets on an exact equality the allowance would have to be generally made. We are very particular at Nashville not to make a second elevation allowance on grain. If it has been elevated on the Ohio River, and we participated in that elevation, or it has been elevated in St. Louis, and we participated in that elevation, we do not allow it at Nashville. If the Nashville man buys in Nebraska, in the great corn fields of Nebraska or Kansas, Missouri or Illinois, and ships direct to himself at Nashville, or to the elevators at Nashville, and then was not accorded this allowance of three quarters of a cent per hundred pounds, and the dealer with whom he competes, whose facilities at the Ohio River and East St. Louis and who buys in the same district and perhaps of the same collector of grain from the producers, is allowed it, why Nashville would be at a disadvantage to that extent and the object was simply to equalize it. The equalization is as near as I can discover an exact one.

Now it is my belief that a dealer who is renting or employing a public elevator in which to handle his business receives the benefit of that concession. We undertake to put them all on an equality. I mean by that that the man who owns an elevator has no
274 advantage over the man who may rent the space or employ an elevator to handle his grain under certain conditions. At least, we have heard no complaint, and we believe that grain dealers at points along the Ohio River, the grain sellers, with respect to this elevation allowance, are on a parity. That is our belief. We know that the Commission has felt that that elevation allowance was perhaps an illegal and unwise concession. The railroads I think as a rule, especially those south of the river, are prepared at any time the Commission may so instruct to discontinue the allowance; and the

only hope the carriers south of the river have to express is that if it is discontinued to the patrons that are wholly dependent upon them for transfer, that it will be so discontinued throughout the west, so that there will be no discrimination.

The cost of handling less than carload shipments is an interesting subject. I heard the testimony of some of our southern friends yesterday, in which one of them illustrated a most extreme case in which at every junction the traffic was transferred from one car to another and the time consumed in transporting the business a few hundred miles was from eighteen to twenty-four days. I want to say that that may have been a condition that existed at a
275 time when the carriers did permit their cars to go off the rails, but that was very remote in the time past, and the transfers made at all junctions were small consignments.

I am not going to claim for a moment that it costs no more for the carriers to transport small consignments than it does the same tonnage in single carload lots. It is a self-evident fact that that is true. The conditions, however, surrounding that movement of this particular tonnage, that we are discussing in less than carload consignments from Nashville is very much different so far as the experience of the Nashville, Chattanooga & St. Louis Railroad is concerned, from that illustration given in the testimony I heard here yesterday. The Nashville mills' trade seems to be of sufficient volume in the entire territory in the southeast to warrant their loading cars to substantially their capacity with less than carload consignments, and those cars are moved direct from the warehouse into our trains in the same manner that we would move a single consignment of a straight carload. I do not mean to say that it is all done that way, but a large percentage of it is. However, it breaks bulk somewhere, and the rehandling of it has to occur en route before it gets to final destination; but our experience has been
276 remarkably small in that way of handling and rehandling that kind of business, because cars are loaded to break bulk at Atlanta, and some of them are loaded to depots of our connections, the business being destined to points beyond reached by those connections, so that our handling has been minimized in that way. The less than carload business of the carriers today where the transportation is for a long distance has been consolidated into carloads or less than carload consignments. For instance, we operate, and our connections, our competitors operate what we call package cars, cars into which we loaded numerous less than carload consignments. The destination of that car might be Jacksonville, Florida, Augusta, Georgia, or Atlanta or Savannah. Atlanta is with us a central point and we have several package cars moving from St. Louis and Chicago over our lines to the south without breaking bulk. These cars contain innumerable less than carload consignments of all kinds of commodities, so that the expense of handling less than carload shipments is minimized to a degree, and the delay is modified. The time is substantially cut to important distributing points on less than carload shipments from the large markets of supply, as straight carloads.

As to the differentials. This is a matter that I think I c
277 properly claim that the Nashville, Chattanooga & St. Lou
Railway and the other lines which I will not mention (th
can speak for themselves) has been desirous of establishing if
practical way could be found to do it, provided of course that t
rate on the less than carloads should be made greater than the exi
ing rates.

The carriers of the south today are in no position or condition
submit to a reduction in existing rates. We would deprecate tha
The advance from the present rates on the less than carloads, t
advance of a nominal amount which these gentlemen in the soutl
east have discussed with us, would not in my judgment prove a har
ship to the consumer. It would represent only a very small pe
centage of the aggregate. A difference in the rates would reduc
the movements in less than carload quantities, and the less tha
carload movement would be confined to the movement probabl
from the jobbing points contiguous to the consuming territory tha
takes this character of business in small lots. It would eliminate t
a large extent the movement of less than carload shipments fro
these primary markets that we mentioned north of the Ohio Rive
and Nashville. It would limit the markets of supply to whic
278 the small dealer and the individual consumer, where ther
are such, order direct. It would limit their market of supply
probably to the dealers located in the jobbing points contiguous t
their places of business and homes.

Now it is a question for the Commission to determine whether o
not the greatest good is going to be accomplished for the greates
number by continuing the one rate on the any quantity rate, o
fixing a differential. As stated, the Nashville, Chattanooga & St.
Louis Railroad does not object to the establishment of a differential
if a practicable way is found of accomplishing it, provided as I said
the differential can be brought about by an advance in the less than
carload rates.

I, for one, believe we are entitled to a better rate on the less than
carload movements. I believe we ought to get it if a practical way
is found to obtain it. These gentlemen that are complaining about
this condition have said to us in the past that they were perfectly
agreeable to having the rates moderately advanced on less than
carload shipments. The carriers have been in conference with
traffic people of the southern lines, and they have had several con-
ferences on this very subject, instigated by these requests from
patrons in the southeast. And I want to say that at the last con-
ference we were all presented with a telegram from Atlanta
279 giving us a certain time in which to determine whether we
were going to establish this differential or not, the informa-
tion and inference being to the effect that if we did not do it, the
proposed advance or restoration of the rates on carloads or any
quantity would be opposed. I want to say that at that time, when
we received that telegram and when we were in conference, one of
the oldest men present, we call him the dean of the traffic fraternity
or profession in the south, said: "I would like to do it, and I told

somebody when I was south the other day that I was willing to do it, that I would like to do it, if they would show me how to do it; and I am damned if I know how to do it."

That was his very language. I think some of you recognize the gentleman. He was willing, but he did not know how to do it. I have great confidence in the gentleman's ability to accomplish most anything in the way of rate adjustment, and he admitted he did not know how to do it. That was the trouble with us at the time and has been on every occasion when we have discussed it. We could not see just how it was going to be accomplished without bringing about a revolution in the present adjustment of rates, and without the co-operation of the State Commission.

280 Mr. Compton very truthfully says that while the railroad commission of Georgia adopted in a measure the classification submitted by the southern lines they have made a great many exceptions to it. They have changed it and have rules and regulations governing intrastate rates which do not apply in connection with interstate rates. That Commission does not maintain a differential rate on these commodities to points within the State of Georgia. That is true as to the other States.

The conclusion I draw from the analysis I have made of the result or the effect of the interstate rate being made higher on less than carloads than on carload shipments generally throughout the southeast is that I am afraid the confusion and the injury that would result would be much greater than the benefit. I think that it would perhaps benefit the large jobbers in the large jobbing points, for the reason that it would extend the territory to which they could reship; but it would extend the territory of all of them and they would overlap, where they do not do so now, and overlap to a greater extent where they do so now; and the competition between the jobbing communities would be increased. That is my belief unless the change is made generally throughout the

281 south. When I say throughout the south, I mean territory south of the Ohio River and east of the Mississippi River; and unless it is made generally I am fearful that the result would be a disadvantage to a large percentage of the interested people. However, if these gentlemen can get together and show us how it can be done, if those communities complaining here can get together and determine for themselves just how it can be done, what the effect would be, and show that it would not be injurious to more people than it would benefit, the carriers would be glad to co-operate with them now as they would have been in the past—when you have that solution.

Perhaps it is not a good thing for me to say, but I am going to say it, and I will tell you why it might not be a good thing to say. When these gentlemen of Atlanta called us into conference sometime ago, the first time that they had a conference—I think they had two conferences—I agreed at this first conference to bring the matter to the attention of the other lines, which I did. At that time, as since, it seemed to the majority of the lines, as I recall it, that it was impracticable or impossible to establish what these gentle-

men at that time asked for, but they wanted a general conferenc
to take place between these jobbers and the representative
282 of the railroads, and it was generally spoken of, and I think
the papers mentioned it. A few days after I returned to m
office I received a letter from an attorney of Atlanta in which h
said he had been retained by the Farmers' Union to oppose th
establishment of this differential. He also said that he had busines
in Washington that would take him away for two or three weeks
and he hoped no action would be taken in the meantime.

I assumed that the other lines received a similar letter, but I have not heard of it. I have mentioned this once or twice. I did not even answer the gentleman's letter, and I could not tell you his name today, but I could find out by searching my files. I only mention that to show that possibly quite an important part of the population of the state of Georgia may be in opposition to our friends, the jobbers. I have learned since that some of my good friends, and I was surprised to hear it, had stated that I had instigated this action of the Farmers' Union. I want to say that I have not had a talk with the Farmers' Union or with an officer of the Farmers' Union since the discussion before the Railroad Commission of Georgia on the passenger rates. I remember that one
or two or three of the officers of the Union were
283 present at that time, but I have had nothing in the world to
do with them.

I mention the fact that possibly there is quite an important organization that would oppose the railroads if they were to find some possible or practical way of putting this differential in effect. I believe I can say for the majority of the carriers, if not for all of them, that if it is practicable to establish a higher rate on less than carloads than on carload shipments, if it can be shown that a greater number will not be injured than will be benefitted, I believe the carriers will very gladly make the attempt, with or without the instructions of the Commission.

Mr. Wimbish: If I may be pardoned, if Mr. Smith needs exoneration at the hands of our clients, I want to say that we did not attribute to him the instigation of the letter to which he refers, because we knew that he knew that the Farmers' Union shipped only in carload lots and would not be at all affected by this differential.

Mr. Smith: I know nothing about the gentleman's authority. I simply state we received such a letter in which the attorney said he
had been retained by the Farmers' Union to oppose the
284 establishment of the differential. Right there, I think Mr.
Wimbish is mistaken when he says that the farmers ship only in carload lots. They are very large receivers and consumers of western grain and they do not receive it and consume it in carloads.

Mr. Wimbish: I am speaking of the Union.

Mr. Smith: But the members of the Union are those that were directly affected, not the organization.

I was very much interested in the discussion of the substitution

of a Memphis car of grain for a Louisville car of grain, this morning. An illustration was made that I had never seen or heard of before, and I doubt if anyone but an expert like our friend Mr. Moore would ever have dug it out. I do not think Nashville grain dealers ever found any conditions of that character under which they could take advantage of it. Referring to a movement of grain from Memphis to Nashville, not a pound of grain can ever move from Memphis to Nashville unless it is intended for southeastern reshipment. When I say that I am mindful that its equivalent could be reshipped coming in over the road somewhere else and being put in the elevator and its identity lost. But from the grain fields, from all of which these primary markets have to draw the majority of their grain, it costs four cents per hundred
285 pounds more to get the grain to Memphis than it does to get it to Evansville or Cairo. That is not always true as to Louisville, but in most cases it is; in many cases. Therefore when the grain reaches Memphis it is just four cents nearer to Atlanta than it is when it is at Evansville, just four cents nearer. Then when it moves from Memphis to Nashville, it costs eleven cents; when it moves from Evansville to Nashville, it costs ten cents. Evansville grain loaded down in Nashville is just five cents per hundred pounds cheaper than when it comes through Memphis to Nashville, so that grain moving from or through Memphis can be consumed by the Nashville market locally, and is never shipped there unless it is en route to the southeast. So if the car of grain is received from Memphis or Nashville and put into the elevator and another car received from Louisville or Evansville, we will say, and goes into the elevator, the Memphis expense bill is invariably used. In other words, the Memphis grain goes into the southeast, or its equivalent, and if the grain is the same grown grain, the same kind of grain, I contend it does not make a particle of difference which grain is shipped, not a particle of difference. One is substituted for the other just like a bale of cotton shipped
286 into a point is substituted for another. Nobody is injured.

I have wondered if you gentlemen have been able to find other combinations than the one you have figured out.

Another thing. The grain from Memphis into Nashville I do not believe represents five per cent of the total that reaches Nashville from beyond the rivers. I may be wrong about that, but that is an estimate of my own, based on observation. So that if there was any special advantage there, if there was evidence of manipulation of special privilege resulting from these conditions that you exploited here this morning, we cannot have a whole lot of grain moving from Memphis into Nashville. The movement is comparatively small. It is not a direct line to the southeast. It is not an impracticable line by any means, but not a direct line, and we are very glad to haul grain from Memphis through Nashville to the southeast.

Mr. Compton explained to you the methods of rebilling at Nashville. I want to say that so far as concerns the Nashville, Chatta-

nooga and St. Louis Railroad, and I think the Louisville & Nas
ville is substantially the same, our instructions to agents, o
information to the public, are on file with the Commissi
287 and I believe copies of our reshipping circulars of instru
tion were filed with our answer in this complaint. There
absolutely no manipulation of rates in the rehandling of grain
Nashville. We protect the through rates in effect from the Oh
River. We do not pay much attention to rates north of the riv
The rates we protect are rates from the river, and as Mr. Compt
has clearly explained, the Nashville market is on a parity with t
other Ohio River primary markets and the Memphis market. No
I do not view the shipping from Nashville as a purely Nashvil
proposition in which Nashville only is interested. I believe that t
interests of the consumers in the southeast as well as the jobbe
warrant the carriers in maintaining just as many primary marke
of supply as possible, and making the competition as great as the
can. The carriers have found it absolutely necessary, so far as th
adjustment of rates is concerned to maintain an exact parity an
equality as between those primary markets. That is what we ar
trying to do, and it affords a thousand or more receivers of grain i
the southeast in carload lots a diversity of markets of supply.

Nashville by reason of its geographical situation as a primary
market has in some respects some little advantage over Cairo
288 some little advantage over Evansville, because it is nearer th
point of consumption and the point of distribution. They
can fill an order a little quicker, deliver it a little quicker. On th
other hand, Nashville, having to draw largely from the grain field
on and beyond the river, their ability to control and secure grain
from the west is not as good in point of time as these markets along
the river. So in the long run I judge the conditions are equalized.

Those are the only conditions which carriers are in any wise
responsible for, and I want to say Mr. Examiner that from my ob-
servation and from my experience I believe every carrier feels as
great an interest in the receiver of grain in the southeast as does the
shipper. I know that the representatives of the Nashville, Chatta-
nooga & St. Louis Railroad have as much interest in the receivers
as they have in the shippers and we are just as zealous to prevent
discrimination and maintain equality between the dealers in this
character of traffic as in any other.

I am here as the representative of the Nashville, Chattanooga &
St. Louis Railroad to say that we are prepared to do anything that
can be done without injury to the greatest number. If the greatest
number can be benefitted by the establishment of a differ-
289 ential, we are prepared to co-operate and do what we can to
establish a differential; but if it is clearly shown by men
with longer heads than I have and a better and greater experience,
that under existing conditions which they do not control it cannot
be done without great injury and great confusion, then I do not
think we ought to do it.

There are others here. I think Mr. Green is perhaps prepared to
tell us considerably more about the results of an effort to establish

this differential somewhere in the past. I am not here to discuss it because it has passed in a measure out of my memory and our interest was not so direct.

My attention has been called to the fact that the Nashville, Chattanooga & St. Louis Railroad maintains a higher rate on less than carload consignments of this character of traffic to points on the W. & A. between Chattanooga and Atlanta. That is true. The rates are class rates on the less than carload shipments. Mills were established under the milling in transit methods at three or four points local to the W. & A. road, and several years ago under the direction of a man who has since been one of the Railroad Commissioners of the State of Georgia and is Governor-elect now of the State of Georgia, a rate was made in carloads to the mills less than
290 the less than carload rates to the local stations. Now, the only reason that he could assign and ever did assign for that action is this: Some of those small mills sell their entire product in Atlanta, and move it in small lots at the local rates. The grain moves at local rates two cents less than to Atlanta, and he did it because he got the benefit of this trade local. The product goes to Atlanta, or in the immediate neighborhood of Atlanta, to points based on Atlanta. Therefore while the rate from Evansville to Atlanta, we will say, was 24 cents, the rate to Adairsville and Acquith and some other small points such as might have been there at that time, (small mills) is 22 cents. When the product was reshipped to Atlanta a charge was made of two cents making a total rate to Atlanta of 24 cents. It was a unique way of saving the railroad department labor in making its claims and getting the matter adjusted. The manager of this road demanded from his connections as much on grain that went to Acquith as he demanded when it went to Atlanta. Therefore the W. & A. had its full proportion and in billing it to Acquith he excluded, we will say, six cents Chattanooga to Acquith, whereas he charged eight cents, Chattanooga to Atlanta. That took up this two cents when the commodity went forward. That condi-
291 tion is inherited. I do not know how long it has been in effect.

Later complaints commenced to be made from jobbers at these other small towns and consumers that we made a rate to the mill point less than we made to contiguous points on either side. We finally made a compromise by making a rate on car loads to milling points two cents higher than to Atlanta and spreading it over the whole territory. That is the way the carload came to be moved below the less than carload in that case, as I recall it. The difference is very slight in some cases and amounts to three or four cents in others. It depends on the contiguity of the common point to which the Atlanta points apply. For instance, Dalton has the Atlanta rate, and Rome and Cartersville, and after that the contiguous stations are affected in a measure by the combinations of those points. I think, Mr. Baxter, that is about all I can say.

Cross-examination:

Mr. Watkins: That differential existed for a great number of years, you say?

292 Mr. Smith: It has for a number of years. Mr. Brown, according to my knowledge and belief, established it for the purpose cited but only in the interest of the stations where the mills existed.

Mr. Watkins: And gradually you have extended the differentials to other stations?

Mr. Smith: We have gradually extended it on a different basis, advanced the rate four cents on carloads to those points and made it uniform.

Mr. Watkins: Consequently there is a differential to all of your stations north of Atlanta?

Mr. Smith: I think all except the common points, Dalton, Rome and Cartersville.

Mr. Watkins: Has that created any great amount of confusion in Georgia?

Mr. Smith: No, sir; I do not understand that it has. There are no rates based on any of these points located in that way; no rates based to points beyond.

Mr. Watkins: Suppose it is to be used on another road where there is nothing based beyond the points to which the rates are established, it would be the same situation as on the W. & A.?

293 Mr. Smith: I do not think it could be on many of the roads; it might be on some; but you cannot take two roads and make the same situation under any condition. That is impossible.

Mr. Watkins: You say you do allow what you designate as elevation payments in favor of the warehouses in Nashville who do the same service as the elevator does?

Mr. Smith: Yes, sir.

Mr. Watkins: The Nashville shipper who ships in bulk grain and sacks it at his store and warehouse and thereafter ships out the sacks to southeastern territory, would be allowed this three quarters cents per hundred pounds.

Mr. Smith: Just as the elevators do. The elevators perform the same character of service.

Mr. Watkins: The minimum of bulk grain is 40,000 pounds, is it not?

Mr. Smith: Yes, sir; I think that is the rule.

Mr. Watkins: It frequently reaches as high as 56,000 and 60,000 pounds per car, does it not?

Mr. Smith: We try to have the cars loaded to their capacity when practicable.

Mr. Watkins: On a car loaded with forty thousand pounds, 294 this allowance would be three dollars per car to the Nashville warehouse?

Mr. Smith: Yes, sir.

Mr. Watkins: That grain moves from the grain producing section into Nashville and may then be moved out of Nashville in sacks in small quantities at the same rate that the bulk car would be taken from the same initial point to the same destination.

Mr. Smith: When you say grain producing territory I want to

explain that no allowance is made for elevation of grain originating south of the Ohio River.

Mr. Watkins: Well, grain produced on or north of the Ohio River.

Mr. Smith: Yes, sir.

Mr. Watkins: So the car moves to Nashville in bulk and out of Nashville in sacks in small quantities to Atlanta on identically the same rate of payment to the roads as if it moved to Atlanta direct without stopping at Nashville?

Mr. Smith: Yes, sir.

Mr. Watkins: When it arrives at Atlanta it may be shipped out—the Nashville car—to local points in Georgia at the same rate from Atlanta that the Atlanta man ships out; that is true; is it
295 not?

Mr. Smith: To the same points; yes, sir.

Mr. Watkins: I mean the local points.

Mr. Smith: Yes, sir.

Mr. Watkins: The Atlanta man when he gets his bulk car in Atlanta has facilities—W. A. Duncan and Company have facilities—to do the same sacking that the Nashville man had, and yet you do not pay him anything?

Mr. Smith: No, sir.

Mr. Watkins: He then ships out.

Mr. Smith: Let me ask you where he got that car of grain?

Mr. Watkins: He got it at the same point; it does not matter where he got it, if it was not elevated anywhere else or some point in the producing territory north of the river. The two cars move from the same point. The distribution is to the same point. Each shipper pays the same rate, but the Nashville shipper gets three dollars per car for his sacking and the Atlanta shipper gets nothing for his sacking?

Mr. Smith: There is no allowance made for elevation at Atlanta; that is right.

296 Mr. Watkins: Now you do identically the same service for the two shippers, do you not? You do no more service for the Nashville shipper than you do for the Atlanta shipper?

Mr. Smith: We perform only this service for either of them—we deliver the car at the warehouse and receive it.

Mr. Watkins: That is, your service to the two is the same?

Mr. Smith: Yes, sir.

Mr. Watkins: Yet the Nashville man gets his service for three dollars per car less than the Atlanta man; is not that true, by virtue of the payment you make to him of the three dollars per car for sacking his grain; that is true, there being no elevator charge paid at Atlanta?

Mr. Smith: We do not pay any elevation at Atlanta, that is quite true. We suggest this to you. The Atlanta man purchases at the cheapest market; he purchases either at Louisville or at some point on or north of the Ohio River or at Nashville, we will say, and the seller of that grain gives him the benefit of all these advantages he secures. If he does not, somebody else will undersell him.

Mr. Watkins: Does the Nashville man purchase in the highest or the cheapest market?

297 Mr. Smith: I assume in the cheapest; Atlanta does the same thing.

Mr. Watkins: Do you know how much you annually pay in these elevator payments?

Mr. Smith: No, I do not.

Mr. Watkins: Can you tell?

Mr. Smith: I can find out.

Mr. Watkins: Will you not file a statement with the Commission showing how much money you pay out?

Mr. Smith: We can do it if the Examiner desires it.

Mr. Watkins: I think it would be material, Mr. Examiner, to have a statement of that kind. I will ask you, Mr. Smith, if you will furnish a statement for the year 1908, as an illustration, showing the amount of elevator payments which you have made at Nashville.

Mr. Smith: If the Examiner desires, we will do it.

Examiner Drayton: Would it not serve your purpose just as well to have the statement cover one month?

Mr. Watkins: Yes, if he will take the month of May.

Mr. Smith: Then you want a statement of the elevation paid at Nashville for the month of May, on grain?

Mr. Watkins: Yes. Now, you practically admit that it

298 costs you more to move this stuff in less than car loads than in car loads?

Mr. Smith: As a general proposition that is true.

Mr. Watkins: This particular commodity in this territory is an average proposition?

Mr. Smith: Yes sir.

Mr. Watkins: If you are compensated by the present rate for the less than car lots then you are over compensated for your car load movement; if you are not compensated for your less than car load lots then some other freight must bear that loss; is not that true?

Mr. Smith: I agree with Mr. Compton that the compensation for the less than car load shipments is not as great as I think we are justly entitled to, and I will say the same with respect to the car load lots. I want to say further that the movement in less than car loads is a very small percentage of the aggregate.

Mr. Watkins: Your table does not indicate that.

Mr. Smith: That is a statement to local points that you have there.

Mr. Watkins: If you lose money on car loads do you actu-

299 ally lose money on less than car loads?

Mr. Smith: There is nobody can say that we lose money.

Mr. Watkins: The less than car load movements out of Nashville then are very small, you think?

Mr. Smith: As an exhibit to certain territory involved it is not very great as compared to the aggregate movement.

Mr. Watkins: Would a differential hurt Nashville?

Mr. Smith: I could not say as to that; I do not think it would be——

Mr. Watkins: Would a differential increase the number of markets to the small dealers in Georgia?

Mr. Smith: I have said that the establishment of a differential would decrease, would modify the markets of the small dealers.

Mr. Watkins: You say that it would lessen the primary market?

Mr. Smith: Yes, sir.

Mr. Watkins: But did you not say that it would increase the capacity of the shippers?

Mr. Smith: It would increase their territory.

Mr. Watkins: And therefore more of it could enter the same territory than can now enter it?

300 Mr. Smith: Yes sir, on a higher basis of rates, probably.

Mr. Watkins: The State Commission of Georgia has never made any objection to this differential which you put in effect on the W. & A.?

Mr. Smith: I have never heard any complaint; I do not know that I ever noticed it or not.

Mr. Watkins: Do you know how the Farmers Union purchases its supplies?

Mr. Smith: No.

Mr. Watkins: You do not know then that they have a purchasing agent?

Mr. Smith: I do not know anything about it.

Mr. Watkins: Which agent purchases for all the members of the Union?

Mr. Smith: No.

Mr. Watkins: You do not know how that is done?

Mr. Smith: No.

Mr. Watkins: If a man presents at Nashville an expense bill showing a movement of a car of grain from Memphis to Nashville, and wishes to ship out a car of grain from Nashville to Atlanta,

301 the rate from Memphis to Atlanta being seven cents, the through rate being 20 cents, he would pay in effect nine cents on that movement from Nashville to Atlanta?

Mr. Smith: He would pay 20 cents, Memphis to Atlanta, and the difference between the 11 cents in and a proportion of that charge out would be refunded.

Mr. Watkins: The effect would be that you would get a rate of 20 cents on that shipment?

Mr. Smith: Yes sir.

Mr. Watkins: As a matter of fact when he gets through he will have paid 20 cents on that car of grain?

Mr. Smith: Yes sir, just as though he shipped it direct.

Mr. Watkins: That is he would have furnished you a statement showing a movement upon which he had paid 11 cents, and he would pay 9 cents more to get it to Atlanta, in the end?

Mr. Smith: He would pay 20 cents through.

Mr. Watkins: 20 cents in all?

Mr. Smith: Yes, sir; we do not bill it from Memphis to Atlanta at nine cents.

Mr. Watkins: You bill it at the local rate of seventeen cents?

302 Mr. Smith: Not always. We charge him 20 cents to Atlanta.

Mr. Watkins: As a matter of fact that particular movement costs nine cents Nashville to Atlanta, he having an expense bill showing a prior payment of eleven cents.

Mr. Smith: I would not like to admit it cost nine cents from Nashville to Atlanta. We charge him twenty cents for the movement. I could not say that we ship it at nine cents from Nashville to Atlanta, because we do not.

Mr. Watkins: As a matter of fact he pays eleven cents to Nashville, and there is only nine cents left.

Mr. Smith: He pays twenty cents through. We may charge him fourteen cents as a proportion through and plus eleven cents would make twenty five cents. We would have to give him the difference between twenty-five and twenty.

Mr. Watkins: I do not care how you arrive at it. If he presents to you an expense bill showing he had paid eleven cents to Nashville on a shipment, he can move it to Atlanta——

Mr. Smith: At 20 cents from Memphis.

Mr. Watkins: When he gets through he has paid a total of twenty cents?

303 Mr. Smith: That is right, yes sir.

Mr. Watkins: You do not know where that car came from that he shipped from Nashville to Atlanta?

Mr. Smith: No, it came from our road at Louisville or Nashville or from an Ohio River point.

Mr. Watkins: You do not reship local stuff that comes from the river?

Mr. Smith: Oh no.

Mr. Watkins: So the man represents to you that he has a car of grain moving either from the Ohio River or Mississippi River crossing?

Mr. Smith: Yes sir.

Mr. Watkins: It might be possible that a car of grain would move from Louisville?

Mr. Smith: Yes sir.

Mr. Watkins: You have no way of finding out?

Mr. Smith: We never attempted to find out.

Mr. Watkins: The man paid you ten cents to Nashville on the Louisville car?

Mr. Smith: He paid ten cents Louisville to Nashville.

Mr. Watkins: The cost from Nashville to Atlanta being nine cents, that particular man moved his car from Louisville

304 to Atlanta for 19 cents?

Mr. Smith: No sir.

Mr. Watkins: That is not true?

Mr. Smith: No sir, because it does not move from Nashville to Atlanta at nine cents.

Mr. Watkins: Suppose the shipper I am talking about had one

two cars. One of them he had bought at Memphis and one of them he had bought at Nashville. The car he bought at Memphis by some accident had burned. There would be no way of distinguishing it. He then only had one car left and that car he ships to Atlanta. Mr. Smith, can you tell me of any other point in the United States that enjoys exactly the same tariff rules and regulations with reference to reshipping as does Nashville?

Mr. Smith: I do not recognize exact conditions between any communities in the matter of transportation; there is always a difference.

Mr. Watkins: There is a difference then as a matter of fact between Nashville and any other place in the United States?

Mr. Smith: I judge so.

Mr. Watkins: There is no other place with which you are
305 familiar where the rules and regulations of reshipping apply the same as at Nashville?

Mr. Smith: No sir.

Mr. Watkins: On the Ohio and Mississippi Rivers crossings the rate through is the combination of two locals?

Mr. Smith: No sir, not always. At Louisville and Cincinnati it is not.

Mr. Watkins: How do you arrive at the rates there?

Mr. Smith: The rates out of Louisville, south of Cincinnati, on business from certain districts are different than on business in other districts.

Mr. Watkins: Then you determine the rate south of Louisville and Cincinnati by the point of original shipment?

Mr. Smith: So I understand. We are not an initial line at either point; but that is my understanding.

Mr. Watkins: What makes that difference?

Mr. Smith: Equalization of through rates from point of origin to final destination.

Mr. Watkins: It means in effect that the roads south of the river shrink some of their rates from certain points?

Mr. Smith: It means the roads south of the Ohio River in a division of the through rate accept less than they would
306 from Cincinnati or Louisville proper.

Mr. Watkins: For instance, take Peoria. Would a shipment from Peoria to Cincinnati on the local way bill to Cincinnati and local from Cincinnati to Atlanta—would that combination of locals be the same as the through rate?

Mr. Smith: I do not know. You will have to ask a Cincinnati line.

Mr. Watkins: I believe you said that you and Mr. Compton together got up this Compton exhibit B-1 and B-2.

Mr. Smith: I will modify that by saying that I furnished Mr. Compton with the performance of our line and he consolidated it.

Mr. Watkins: Could not you and Mr. Compton for the benefit of the Commission in this case furnish them a statement similar, but instead of limiting the shipments to local points in the State of Georgia, include all shipments in the state of Georgia?

Mr. Smith: I think they did. I doubt if they handle it now; I think their elevator has been closed.

Mr. Baxter: Then your statement and that of Mr. Compton would not show the total tonnage of this grain to south-
312 eastern territory, if they do participate?

Mr. Smith: Approximately it would.

Mr. Baxter: If the Tennessee Central does participate in it it would not show that?

Mr. Watkins: Do you understand that they do not?

Mr. Smith: To a very limited extent; that is my understanding.

Mr. Watkins: I believe you were in Atlanta on March 26th, 1908, and that you were one of a special committee to whom this differential question was referred; that is true is it not?

Mr. Smith: I was there but I do not remember the date. I was on a committee of railroad people.

Mr. Watkins: At that meeting do you remember that you passed a recommendation recommending a differential?

Mr. Smith: I do not recall it. Possibly we did. You have the record?

Mr. Watkins: I have the minutes; yes sir. Do you want to read them for the purpose of refreshing your recollection; I will read them myself, to Mr. S. F. Parrott—

"The following action was taken at meeting held in Pied-
313 mont Hotel Atlanta, Ga., on February 12th, between a committee of grain dealers of Atlanta and a number of the grain carrying lines of the South:

'On motion the grain dealers' committee withdrew and representatives of the carriers, after further discussion, referred the matter to the following committee of Atlanta Terminal Lines with request that said committee meet and give consideration to the matter of the practicability of establishing a differential rate on commodities and classed C. D. & F. in LCL Lots; such differential to be reached by placing LCL shipments in a higher class than car load shipments.'

The sub-committee appointed met on Thursday, March 26th, in the rooms of the Southeastern Freight Association, Atlanta, the representatives being:

Ga. R. R., Mr. A. G. Jackson, G. F. A.
Sou. R. R., Mr. T. C. Powell, V. P.
W. & A. R. R., Mr. H. F. Smith, T. M. & V. P.
S. A. L. R. R. Mr. L. Sevier, V. P.
C. of Ga. R. R., Mr. W. A. Winburn, 2nd V. P.—C. T. Airy F. T. M.
A. & W. P. R. R., E. T. Eckols, G. F. A.
A. B. & A. R. R., J. J. Campion, G. F. A.
314 L. & N. R. R., A. R. Smith, 3rd V. P."

By thus refreshing your memory, do you remember that you were a member of that sub-committee?

Mr. Smith: I think so; I do not think there is any question about it.

Mr. Watkins: (Reading.)

"The question placed before the sub-committee was discussed in

its several phases, resulting in the unanimous adoption of the following recommendation to the general committee:

'Recommended, That from the Ohio and Mississippi River crossings, and points basing thereon, to southeastern common and basing points, the existing Class D. rates be continued as rates applicable on grain, flour, meal, grits, hominy, bran, mill feed and malt, C. L. 30,000 lbs. minimum.

That rates on these mill products in bbls., C. L. 30,000 lbs. minimum, per bbl., be made double class D rates.

That the present class C rates be continued as applying on these articles in sacks, L. C. L.

That rates on said articles in bbls., per bbl. L. C. L. be made double class C rates.

That the existing commodity rate on flour, in sacks, any quantity, be withdrawn.

315 The sub-committee also made the following recommendations to the joint conference:

'Recommended,' further:

That the committee propose consideration by the conference committee of all advances in rates on classes C. & D. to the South-east and basing points to that in effect on Jan. 1st, 1905, or to that basis in some modified form."

Do you remember making that recommendation?

Mr. Smith: I have a recollection of the meeting; yes sir. I have no doubt the record is correct.

Mr. Watkins: When that arrangement was made by your subcommittee did you make it just perfunctorily or did you mean what you said?

Mr. Smith: We are not in the habit of taking action of that kind in a public and general way just for fun. No, sir.

Mr. Watkins: You then did not make it for the purpose of deceiving the Atlanta grain dealers or anything of that kind?

Mr. Smith: Certainly not.

Mr. Watkins: You were seriously in earnest about making it?

Mr. Smith: Yes sir.

316 Mr. Watkins: Were there any more difficulties in the way than that of putting in a differential than there are now?

Mr. Smith: Not a bit. That was a committee recommendation. We perhaps have learned something since then.

Mr. Watkins: You were all quite young men in the traffic business then?

Mr. Smith: We were all quite crude in the consideration of the question at that time. Investigation has changed the opinions of some of them, as to the practicability of it.

Mr. Watkins: Do you not know that you have been presented with this differential question for ten years?

Mr. Smith: No, I do not; I know I was not.

Mr. Watkins: You know it was presented in the Atlanta conference in 1904? You were in the Atlanta conference of 1904?

Mr. Smith: Yes sir.

Mr. Watkins: And it was then presented to you there?

Mr. Smith: I do not recall; maybe it was. Reshipping was asked for at Atlanta at that time.

Mr. Watkins: But the differential question was discussed at that meeting also?

317 Mr. Smith: I do not remember it.

Mr. Watkins: The Atlanta shippers have been discussing it with you since then?

Mr. Smith: Yes sir.

Mr. Watkins: So that the matter which was considered at the meeting on March 26th, you had had under consideration for some time at least?

Mr. Smith: March 26th, 1908?

Mr. Watkins: Yes.

Mr. Smith: I had had it under consideration with these gentlemen in Atlanta two years before that, I think, had I not, Mr. Morgan?

Mr. Morgan: I think so.

Mr. Smith: And had urged it before the rate convention?

Mr. Watkins: If the Commission can show you how you can do it you have no objection to the differential?

Mr. Smith: Yes sir.

Mr. Watkins: And you have so stated to the Atlanta shippers?

Mr. Smith: Yes sir.

Mr. Watkins: And you so state now?

Mr. Smith: Yes sir. If it can be brought about by an
318 advance in the rates on less than car load lots, without injury.

Examiner Drayton: The southeastern terminal of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway is at Atlanta?

Mr. Smith: Yes sir.

Examiner Drayton: If your line and the Louisville & Nashville went beyond Atlanta and served a large territory such as the southeastern territory from Nashville, such as that stands in relation to Nashville, would it be to your interest to put in some sort of rebilling privilege and putting the car load and less than car load rates on the same basis as you now have them in to Nashville?

Mr. Smith: At Atlanta?

Examiner Drayton: Yes sir, at Atlanta.

Mr. Smith: Well, the differential is a question that we are not all agreed upon, and whether it would be advisable to establish that at all or not is still an open question. With respect to reshipping I would say that would be very unwise. The conditions at Atlanta are so dissimilar to those at Nashville that reshipping is not essential any more than it is at Chattanooga. We operate through
319 Chattanooga and the Louisville & Nashville through Knoxville, and the two roads through Birmingham, yet we do not attempt to establish reshipping arrangements at those points and never *gave* attempted to do so, and see no occasion for doing so. One of the troubles about the expansion of reshipping is this, that we could not restrict the reshipping to one time. For instance we allow

a car to be reshipped at Chattanooga to Atlanta. The same grain might be again reshipped to Macon and to Augusta or to some other point in the Southeast. That would create endless confusion. And if, as these gentlemen infer there perhaps is manipulation under this method of reshipping at Nashville why, it would be exaggerated to an unlimited extent if it was expanded to any unlimited extent all over the territory. We could not for a moment advocate reshipping generally and we could not advocate it at Atlanta without permitting it everywhere else. We have explained just why it was established at Nashville a great many years ago and just why it seemed necessary to continue it.

Examiner Drayton: I think I understand that. The only point in my mind was to find out whether it would be of benefit in the event that your line reached beyond Atlanta and served a
320 large territory southeast of Atlanta, as it does to the southeast of Nashville.

Mr. Smith: It would not make a particle of difference in our policy and we do not feel that it would be an advantage to us or to the community, to establish reshipping towns. We believe it would be a disadvantage.

Examiner Drayton: I was confining it to Atlanta because it is an important point and might be used as a basing point the same as Nashville.

Mr. Smith: That would not follow at all.

LINCOLN GREEN was called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Mr. Northrop: What is your full name?

Mr. Green: Lincoln Green.

Mr. Northrop: And your occupation?

Mr. Green: I am Freight Traffic Manager of the Southern Railroad.

Mr. Northrop: Please state your railroad experience.

Mr. Green: My railroad experience has covered a period
321 of upwards of twenty odd years in the south, most of the time in the freight traffic service.

Mr. Northrop: You have heard the testimony of Mr. Compton and Mr. Smith, and without going into this matter in too much detail I would be glad if you would state briefly something as to the origin of reshipping arrangements at Nashville, and in this connection state whether or not in your opinion it must of necessity be continued. Also state whether or not you agree in what Mr. Compton said on the subject, and also state whether the effect is to the advantage or disadvantage of the seller; and whether or not it produces any undue discrimination against points like Atlanta, Macon, Augusta, and cities situated in a like category with these points.

Mr. Green: You have combined quite a number of questions in one and I may fail to answer some of them.

I have heard Mr. Compton's testimony and Mr. Smith's testimony. What they have stated as to the facts, as to the history of the reshipping at Nashville and the method of handling the traffic at the

present time, is correct. In my opinion nature gave Nashville the reshipping privilege. It was the first of the western gateways,
322 and prior to the construction of the Louisville & Nashville road between Louisville & Nashville, the grain traffic from the west sought entry to the south through the gateway of Nashville.

The transshipment of grain and grain products at Nashville came about in that way. It does not in my opinion operate to the disadvantage of Atlanta or any other part of the southeast. On the contrary it is a distinct advantage to the southeastern territory in that it does give them a market of supply which they would not otherwise have, or if they did have it, they would have it to a very limited degree, limited only by the ability of Nashville to rehandle the grain originating locally, and sending that grain into the south. Therefore in so far as Nashville can handle a larger area of grain and deliver it in the southeast in competition with other markets of supply it is an advantage to the southeast.

Mr. Northrop: What is the difference between the situation at Atlanta and Nashville? Why should not Atlanta have reshipping arrangements? Why should it be confined to Nashville, Louisville, and East — Louis, Kansas City, and St. Joseph?

Mr. Green: Nashville is a primary grain market. She not
323 only is naturally tributary to the grain originating at the Kentucky River but is in the midst of a grain producing territory. This question of reshipping in the southeast has not troubled us with respect to Atlanta alone. We have had within recent months application for the privilege from Chattanooga, Rome and Birmingham, and in years past it has been raised from time to time at numerous points in the south. None of those points are primary grain markets excepting Chattanooga to a limited extent. Chattanooga is on the Tennessee River and there is an amount of grain tributary to Chattanooga which comes naturally to her door, down the Tennessee River. That supply, however is limited and is not sufficient to meet the local milling demands, and Chattanooga is not in the same situation as Nashville, although it is a more advantageous one as a primary grain market than is Atlanta.

Mr. Northrop: The effect of giving Atlanta reshipping arrangements such as Nashville enjoys would amount to practically diverting Atlanta into a primary market by artificial means, would it not?

Mr. Green: I think so, and we have not felt that we could do it without giving every point in the south reshipping, which de-
324 manded it. The effect of it would be this: The reshipment of grain must be in the direction of the final destination. In other words, you cannot on the basis of direct through rates reship backwards in the direction of the source of supply. If you inaugurated reshipping at Chattanooga, thereafter Chattanooga could ship to Atlanta and reship to Atlanta, but Atlanta could not reship to Chattanooga. Atlanta could reship to Augusta, Macon and other points east of Atlanta, but those points could not reship to Atlanta, and finally the last point near the coast that had no territory on the east would not be able to reship it.

Mr. Northrop: In your opinion is any undue discrimination

brought about operating against Atlanta, Macon and these other points in favor of Nashville by the present reshipping arrangement at Nashville?

Mr. Green: There is not.

Mr. Northrop: You think then that the arrangement at Nashville, being the result of natural causes, and the situation at Nashville being different from the situation at Atlanta, that the difference in circumstances does not amount to undue discrimination?

Mr. Green: That is my feeling, and if a thing is wrong at Nashville, I think it must be wrong at Ohio River crossings, St.
325 Louis, Kansas City and other points where it is practiced.

Mr. Northrop: Will you explain fully why a car load and less than car load is not giving the grain and grain products an advantage in the southeast?

Mr. Green: That too is an old question that has arisen in the past, everywhere where the jobber or the broker is trying to enlarge his territory for the distribution of less than car load traffic particularly in competition with the producer on direct shipments. It ought to be explained Mr. Examiner, that in the adjustment of rates from the Ohio and Mississippi River crossings and Nashville to the Southeast, there are rates to these larger trade centers like Chattanooga, Rome, Atlanta, Augusta, Macon and Columbus, the result of aggressive competition, that are lower than the rates to the surrounding local territory. The points I have named are what are called in rate nomenclature common or basing points. There are a number of minor junction points where the rates are not so low as to these larger common points but are still lower than a combination basis such as Griffin, Newman and some of the points further south in Georgia, Cordele, Alhaly, some of those
326 rates fixed by the Commission below the combination basis, but generally speaking the rates to the local territory are made by a combination of the rates to these common points of the locals out.

Therefore there is a certain territory surrounding each of these common points, a set of rates which permit the small dealer or the consumer in such territory to purchase his supplies either in the market on which his rate is based—Atlanta for instance—or at the primary market like Nashville, Louisville or St. Louis on exactly the same terms so far as transportation is concerned.

I have a little diagram which I will file as an exhibit, which illustrates what I wish to explain.

(The diagram referred to by the witness was received in evidence and marked "Exhibit Green No. 1" and is transmitted herewith and attached hereto.)

Mr. Green: In that diagram Atlanta is the center of a series of circles each twenty miles distant from the other. I ought to explain that the location of the points on the map with respect to the distance is not entirely accurate because of straight lines being drawn, but I did not have time to rectify that today.

To the territory on the lines marked in red, from Atlanta, the rates on grain and grain products today from the west are no
327 higher than the Atlanta combination, and any dealer in that territory has the privilege of buying his goods in Atlanta or at the primary markets in the west at the same transportation cost whether he buys in car loads or less.

You will see by the map that Atlanta can ship back in the direction of Chattanooga on the W. & A. road to Elizabeth, thirty five miles, and ship east and south to Taccoa, a distance of eighty-seven miles; it can be shipped east on the Georgia Railroad about the same distance, and southward on the Southern Railroad in the direction of Macon about sixty miles; and southwest towards West Point about eighty miles. That is to say the rate into Atlanta added to the rate out of Atlanta to that territory is the same as the direct rate. There are a few points in that radius, such as Griffin, Newman, Athens and so forth where the combination does not apply and where that is not entirely true.

Examiner Drayton: Car load and less than car load rates into and out of Atlanta?

Mr. Green: They are all any quantity rates. What I mean is that Griffin, for instance, is three cents from Macon, and the total is less than the Atlanta combination, I think three cents;
328 but as to local points on either side that is true. These gentlemen have asked us to establish a greater rate to Atlanta, Macon and other of these larger points in the southeast that ship five cents per hundred pounds lower than the less than car load rate, and it probably goes without saying that if we can establish that basis of rates to the common points it must be established to the entire territory. They have said that they are entirely willing that we may bring about that differential by an advance in rates. The proposition is not objectionable to us from a transportation standpoint. The effect of it is illustrated by the map that I have filed as Exhibit No. 1. I have assumed that the less than car load rates to the territory embraced in that map are five cents higher than the existing rates, and that the existing rates become car load rates. I have then by the green lines on the map extended the territory to which the car load rate to Atlanta, plus the less than car load rate from Atlanta, would enable the Atlanta jobber to ship into Atlanta and reship at a less transportation cost than the direct shipper from Nashville or other western points on less than car load shipments.

Therefore this map discloses what is really the essential point in this contention here, that the rates be so adjusted
329 that the jobbing centers of the southeast shall be enabled to control the distribution of such car load shipments against the direct shipper. That would be the literal and inevitable effect of the adjustment for which they ask.

It ought to be explained that this map is merely to illustrate the advantage which Atlanta would gain against the direct shipper. Atlanta's territory would not be increased in competition with Griffin or Macon or any surrounding jobbing points in the southeast

because they of course would get the same relative adjustments that they now enjoy but the territory of all of them would be increased as against the direct shipper.

Mr. Northrop: Right there, this map shows, as I understand it that these local retail shippers would be obliged then to purchase from the Atlanta jobbers, and would no longer have the power and ability of purchasing from Nashville, Louisville, or other points; is that correct?

Mr. Green: In my opinion the retailer in the Atlanta territory where the rates now base on the Atlanta combination would be compelled to buy his goods in Atlanta and would not have the choice that he now has of buying them elsewhere at equal
330 rates. That would be to a large extent true in the extended territory and it may be that at the extremes of some of these points where the difference is narrowed down to one or two cents he might as well buy at the primary markets, but the inevitable result of an adjustment of this kind in my opinion would reduce the opportunity very largely of the small dealer and of the seller to deal direct with the producer in the west.

Mr. Northrop: Do you know how many of these small dealers there are of that character you have on the map?

Mr. Green: I do not know: their name is legion. Mr. Compton has already referred to an effort made by the carriers ten years or more ago to establish, on the request, of what is known as the Southern Wholesale Grocers Association, car load differential rates on food from points from the west. Those rates were actually put into effect, and I think they remained in effect less than three months. Some of the railroad commissions at least, I don't recall all of them, positively declined to recognize the principle or permit a change in the local rate adjustments, and that all led to a great deal of confusion. As to those jobbing centers close to state lines that had to stand the interstate adjustment, and the com-
331 petition of jobbing centers within the state that had the any quantity adjustment, were placed at a great disadvantage. My recollection is that the application for the return to the old basis came from the people who first asked to have it put in. We have had the matter tested in a much more recent period, in the Carolinas. The wholesale Grocers Association of North Carolina in the latter part of 1903 asked the carriers to establish car load and less than car load rates into that state. They even took some steps for legislative action to force the carriers to do it. Rates were issued, effective the 15th of April, 1904, making a difference between car loads and less than car loads on classes B, C and F., including packing houses and butter.

From the west to the entire Carolina territory, north and south, and a large extent of Virginia, as soon as the publication of those rates became known the carriers received protests from the commercial bodies of Virginia Cities, like Norfolk, Richmond and Lynchburg, from the milling interests in the valley of Virginia and in the west—I recall a telegram from Ballard at Louisville to the effect that such an adjustment would put them (Ballard) in the

hands of the jobber, and that it would be more disastrous than a fire: that they were shipping three thousand barrels of flour
332 a day then into the southeast and the Carolinas, selling it direct to the retail dealer very largely, and that they would be deprived of doing that.

I think I ought to explain in this connection that as to practically all of the flour milling in the south—or certainly it is very largely so—it is sold direct by the miller to the retailer. In former years it was sold through the wholesale grocer or jobber; so that these numerous objections arising, the effective date of the tariff to which I referred was postponed to the 1st of June, 1904, and still again postponed until the 1st of July. In the meantime the Retail Merchants Association of North Carolina became very much aroused about it, and in short the pressure of opinion from a majority of the people interested in the question led us to abandon the proposition entirely, so that we have made at least two efforts to do exactly what these gentlemen have asked us to do, and we have not been able to do it. Personally I do not know how it can be done. There has been read into the record here a recommendation made by a subcommittee. I said to Mr. Moore yesterday that if he had examined me as closely as he might he would find that when inquiry was made of Mr. Smith, Chairman of the committee as to what
333 would be done he told me of the recommendation and said he did not think it was practicable himself. Certainly I did not. I am not sure that it is a thing that ought to be done. We ought not to make an adjustment of rates here to prevent these people in the South, the consumer and the small dealer from going direct to the producer if they want to. It is a tendency in modern business for the consumer and the producer to get closer together, and I am sure we would meet with a great deal of opposition when we tried it.

Examiner Drayton: When that adjustment was put in about which you speak was it put in exactly the way as is requested here—that is, you added a differential of five cents to the less than car load rates?

Mr. Green: We did not. The differential varies, as I recall. The principle was the same.

Examiner Drayton: When you put it back you simply took off the difference?

Mr. Green: Yes sir; we simply restored the old rate to the quantity basis.

Examiner Drayton: Did that result in decreasing your revenue, or could it have any effect in so short a time?
334 Mr. Green: The rates never became operative. They were postponed from the 15th of April to the first of July and then we did not put them in at all.

Mr. Northrop: Can you give us an illustration of the difficulties that will arise in connection with the State Commissions' any quantity rates, assuming that some such plan as is here advocated would be put in operation?

Mr. Green: Well, Mr. Compton refers to a number of those to-

day. They would of necessity operate at such points as Chattanooga, which is right on the borders of the State of Georgia, at Augusta, that borders on the State of South Carolina; at Columbus, Georgia, that borders on the state of Alabama. If we undertook to establish car load and less than car load rates on all interstate traffic, which is what we would have power to do under the order of the Commission, those gentlemen would immediately be confronted with the same difficulties they met before, having a car load adjustment on shipments to cities in an adjoining state, while their competitors within those states would have no quantity adjustment.

Mr. Wimbish very correctly stated in his examination of Mr. Compton that that would not be a disadvantage to the Au-
335 gusta merchants in competition with the man at the primary market because the Augusta merchant's rates would not be compounded, as would the man at the primary market, and even when the Augusta man attempted to sell goods in South Carolina against Charleston and Columbia, he would meet with the same difficulties that these other cities meet, to which Mr. Compton referred—as Chattanooga would when it tries to sell in competition with Rome or Atlanta.

I might say right here that this question of competition through the South Atlantic ports and through the interior points in the south that have the benefit of water competition in the east, is another difficulty. All grain moves today from Philadelphia to Charleston and Savannah at seven and one half cents on a proportional rate to the west and will continue to move into those important cities and have the benefit of any quantity rates outbound. We have been compelled on account of competition with rates from Charleston, with rates fixed by the South Carolina Commission within the state, to apply the Augusta rate to points in South Carolina. The same thing is true from Savannah, which is on the borders of the state, trying to supply South Carolina in competition with Charleston, so that you could not maintain an inter-
336 state adjustment on these border state points, radically different from the rates prevailing within the state, and continue state relations, without a great deal of friction.

Mr. Northrop: As I understand it the rate from Louisville to Nashville is ten cents on flour, and from Louisville to Chattanooga 21 cents; Louisville to Atlanta 24 cents; Louisville to Macon, 26 cents—any quantity rates. Do you think it would be possible to increase that rate in less than car load shipments say from Louisville to Nashville from ten cents to fifteen cents; or suppose you did not increase the less than car load rates and made the car load rates five cents from Louisville to Nashville?

Mr. Green: I understand the ten cent rate from Louisville to Nashville is the direct result of water competition on the Ohio and Cumberland Rivers. It could not be materially advanced without inviting certainly an increase in that competition and losing some of the business to the river route. That rate because of that competition, is abnormally low. The river rates have any quantity rates, and if river competition has any bearing and should have

any bearing on the situation it is not likely that the rail
337 lines from Louisville to Nashville would be able to maintain a less than car load rate of fifteen cents. Certainly they could not very well afford to make a car load rate of five cents in order to maintain a differential of five cents between car loads and less than car loads.

Mr. Northrop: That same difficulty would present itself throughout the transaction even down as far as Macon, I suppose.

Mr. Green: There is not the same difficulty in obtaining that from the south. Wherever you have an any quantity rate as low as ten cents you cannot undertake to make a difference of five cents. When you get up to a difference of 21 and 26 cents, I think it would maintain a uniform differential as large as five cents. You could not do that under a mileage scale of rates on interestate traffic; you could not say—"make the less than car load rates for five miles five cents higher than the car load rate and the less than car load rate for two hundred miles five cents higher." When you have to graduate a scale you have to graduate your difference.

Mr. Northrop: Are there any very practical difficulties in the way of solving this problem?

Mr. Green: I do not think of any that have not already
338 been stated.

Mr. Northrop: Some letters were introduced here by Mr. Smith and Mr. Watkins: Have you any comment to make on those letters?

Mr. Green: I have referred to one of them, Mr. Smith's letter transmitting the recommendation that was made by that sub-committee appointed in Atlanta. It is like a great many other recommendations, not adopted. There *is* other memoranda here referring to Mr. Biles, Mr. Compton and myself, that I think have no significance except to demonstrate what we have tried to show here, the difficulties about this question.

Mr. Northrop: Have you anything to say about the testimony that was put in here in reference to the cost of forty less than car load shipments as compared with a whole car load?

Mr. Green: There is no difference in the transportation cost of a car of flour shipped from Louisville to Nashville and then re-shipped in forty different lots, and a similar car of grain or flour shipped from Louisville to Atlanta and then distributed into these different lots, except the difference that would be in the unit of cost, for the transportation of a car load shipment for the longer distance to Atlanta. That of course would be less per mile or less per
339 ton than the transportation cost to Nashville in the car loads. When it comes to the distribution there is just the same number of transactions in each case.

I ought to add that most of this business moves either in solid car loads to distributing points in the South, and even as to the less than car load business it is moved almost entirely from those larger milling centers in what are practically solid cars, less than car loads combined, and so far as the transportation is concerned it is through business. Even to points like Chattanooga and Knox-

ville where there are large milling interests the stuff is loaded at the mills and sent forward to the terminal points or to the actual final destination in solid cars, although they may be made up of a great many less than car load shipments. It is proper to say that they all pay the less than car load rate.

Mr. Northrop: You do not mean to say it is better for a railroad company to have full car loads, train loads, in these small less than car load lots; it is cheaper to haul car loads and train loads than it would be to haul less than car load lots?

Mr. Green: It is cheaper: that is, the unit of cost is less for the transportation of solid car load business a long distance than
340 the transportation of less than car load business the same distance, even though combined into through cars and hauled on through trains. The difference, however is not important and cannot be because it merely consists in the difference of way billing and accounting. I say that because I want to distinguish between the usual less than car load shipments from distributing points on way freight, because that is the most expensive transportation we have.

Mr. Northrop: In other words that way freight would not fill a car half the time.

Mr. Green: It might or it might not. Usually the car will dwindle out before it reaches its destination.

Mr. Northrop: That character of business is very expensive, I understand.

Mr. Green: It is the most expensive character of freight transportation.

Mr. Northrop: Mr. Green, mention was made here of the fact that in other territories there are car loads and less than car load rates on this traffic. Will you kindly state what the differences are, the situation in those territories where such rates prevail as compared with the situation in the South?

341 Mr. Green: In what is called Official Classification territory, the territory north of the Ohio and Potomac Rivers and extending as far South as the lines of the Norfolk & Western and Chesapeake & Ohio roads, and east of St. Louis and Chicago, nearly everything in their classification in that territory is rated in both car loads and less than car loads. In the Western Classification territory, that is west of Chicago and St. Louis, west of the Mississippi River they have a very much larger number of car load rates than we have, and as to this particular traffic have both car load and less than car load rates.

The car load and less than car load rates on this particular traffic have been introduced to some extent in the Mississippi Valley east, as shown by Mr. Crompton. I think there is one reason for it which he overlooked, and that is that the exportation of grain through New Orleans and Mobile and other Gulf ports has led to the adoption of very low carload rates on traffic that moves only in car loads and when it does move, moves largely in train loads. It has made, in competition, a route through Galveston and a route through the eastern ports, necessitating car load rates. If there was no other

342 reason for it, those car load rates at New Orleans and Gulf ports, added to the any quantity rate of the Mississippi Valley, if the Mississippi Commission and the Louisiana Commission would make car load rates into the Mississippi Valley, was a condition that led to more or less dissatisfaction on the part of some of them served by the Illinois Central Road. They had grain coming in there through Vicksburg and Greenville. They had put in car load and less than car load rates made primarily on this situation at the Gulf ports which they had to recognize and could not possibly escape recognizing, for the purpose of putting the points further north on their line in Mississippi, that were not directly affected by these combinations on the ports, some of them, on a parity with the points nearer the cost. I understand the effect of it has been practically to drive out the jobbing business at Mississippi junctions.

Mr. Northrop: How has the less than car load rate worked out in Official Classification territory?

Mr. Green: It puts the distribution of business in the hands of the local jobber at every distributing point. Mr. Ballard in the protest to which I referred made the statement that he could do no business in Virginia except through the jobber, simply because he

343 had to ship in car loads to the jobbing centers. He could do that.

Mr. Northrop: I understand Virginia cities have trunk line rates, practically?

Mr. Green: Yes sir. If you put a car load rate into Atlanta, certainly the miller in Chattanooga who is milling grain in transit or the man in Nashville who is reshipping grain, cannot sell grain or flour in less than car loads in Atlanta on the through less than car load rate to Atlanta because the jobber in Atlanta, shipping flour or grain to Atlanta, to the local mill at Atlanta, getting his grain entirely at the car load rate which is lower than the less than car load rate, would control that market as against the direct less than car load shipments, so that the people at these distant points must inevitably either have their own agencies there, shipping in in car load lots to supply the local trade, or they must employ people already there to handle their goods for them.

Mr. Northrop: That immediately cuts off the power and ability of the small dealer to buy direct from the miller at the primary market, such as Louisville and other points?

Mr. Green: Unquestionably it would deprive the miller in Chattanooga, for instance, from the opportunity of delivering his

344 less than car load shipments of flour in Atlanta, even though he is milling in transit on the same transportation terms that the local miller would have.

Cross-examination:

Mr. Watkins: Is it not true that a great many millers refuse to sell to local dealers anyway, and sell only to jobbers?

Mr. Green: It may be. I do not know of any of them in our territory. The Atlanta Milling Company does most of its business with

the retailer as does the Milling Company of Chattanooga; Smith & Company do the same at Knoxville, Tennessee. The same is true as to most of the mills in our territory and I think we have a large number doing business direct with the retailer.

Mr. Watkins: It costs you more to haul this traffic in less than car loads than in car loads?

Mr. Green: I have stated that with an explanation as to how the business is handled.

Mr. Watkins: I did not ask you to repeat the explanation; it does cost you more, does it not?

Mr. Green: It costs something more to handle a number
345 of less than car load shipments the same distance than it does to handle a solid car load shipment, even though the less than car loads make up in the aggregate a car load. The difference is not a great deal, however.

Mr. Watkins: You have bulk grain. That moves in cars as large as 60,000 pounds?

Mr. Green: Yes sir.

Mr. Watkins: It would be absolutely impossible to make a mixed car weigh that much?

Mr. Green: You mean on less than car load shipments?

Mr. Watkins: Yes, on less than car load shipments of sacked grain?

Mr. Green: I do not think so.

Mr. Watkins: Could you load a car to its full capacity with sacks as you could load it in bulk?

Mr. Green: I do not know; I have never seen it tested; I have never tried it. I think if we got it in the car it would carry.

Mr. Watkins: Under the rules at Nashville, if the Nashville dealer ships out 24,000 pounds—I believe that is the amount—he gets his elevation payment; is not that the rule?

346 Mr. Green: I am not familiar with the details of those rules.

Mr. Watkins: Is there a minimum?

Mr. Green: I could not say for that territory.

Mr. Watkins: If he can ship out 24,000 pounds at the same rate and receive his elevation payment on the 24,000 pounds—say it was moved through from Memphis, he would pay only $48 a car?

Mr. Green: Yes sir.

Mr. Watkins: Now if there were 60,000 pounds he would pay $120 a car?

Mr. Green: Yes sir.

Mr. Watkins: The car revenue then would be quite a good deal larger in the bulk shipments than in that 24,000 pound shipment?

Mr. Green: Not necessarily, because all bulk shipments are not all in 60,000 pound lots.

Mr. Watkins: But the minimum is 40,000 pounds for a bulk shipment?

Mr. Green: Where to?

Mr. Watkins: To Atlanta, to river crossings.

Mr. Green: I do not know that we had a minimum.

347 Mr. Watkins: The bulk grain would have a minimum of 40,000 pounds, and you would charge on 40,000 pounds even if there was less than that amount in the car?

Mr. Green: That is correct.

Mr. Watkins: That would be about $80?

Mr. Green: That is correct.

Mr. Watkins: The red lines on your map indicate the territory that Atlanta can now reach, and the blue lines the territory she could reach if a differential were in?

Mr. Green: The red lines indicate the territory to which Atlanta can distribute on equal terms with the direct shippers. I do not mean it to be understood that Atlanta does not go beyond the red lines and cannot now reach beyond the red lines.

Mr. Watkins: That is what I mean to say. The green lines would show the territory she could reach on equal terms with the direct shippers if the differential was in?

Mr. Green: No sir.

Mr. Watkins: What do they represent?

Mr. Green: The green and red lines combined represent the territory to which Atlanta would have an advantage in the transportation cost under the differential adjustment. In other words you

348 cannot ship at less cost.

Mr. Watkins: That, have an advantage of the primary markets?

Mr. Green: Yes sir.

Mr. Watkins: And not have any advantage over Augusta, Macon and Athens?

Mr. Green: I explained that this map was to illustrate the advantage that Atlanta would obtain as against the direct shipper in the primary markets; that her relation as to these other jobbing centers would remain the same as now.

Mr. Watkins: Augusta's territory would extend correspondingly as Atlanta's is extended, by a differential?

Mr. Green: Not correspondingly, because she has no point beyond her as Atlanta has and besides, Charleston is only 38 miles away.

Mr. Watkins: It would be increased?

Mr. Green: Yes sir.

Mr. Watkins: And Macon would be increased?

Mr. Green: Yes sir. This is an illustration as to what would result to all these jobbing centers, differing only as to degree.

Mr. Watkins: So that Macon, Atlanta, and Augusta might

349 meet in their territory?

Mr. Green: Just where they do now.

Mr. Watkins: If each city's territory extended, would they not overlap?

Mr. Green: No. I have tried very hard to make plain that their territory would not be extended as against each other. The territory of each would be extended as against the direct shipper.

Mr. Watkins: The relation between them would not be affected?

Mr. Green: Not while the present relative adjustment as between

the various points is maintained. I do not understand that there is any expectation that it would be disturbed.

Mr. Watkins: But Augusta, Macon and Atlanta are in competition in the same territory as now, are they not?

Mr. Green: Just as they do now.

Mr. Watkins: There would be no competition then for the local dealer and he would only be deprived of competition now existing in primary markets?

Mr. Green: No sir, the man whose rate based on Atlanta would have to buy in Atlanta and could not buy in Macon and
350 Augusta except at a disadvantage.

Mr. Watkins: Can he do it now?

Mr. Green: No.

Mr. Northrop: He can buy in the primary markets?

Mr. Green: Oh yes.

Mr. Watkins: Do you think it is right, by an artificial condition created by the railroads, however caused, to give Nashville an advantage in territory several hundred miles from Nashville and within a few miles of a Georgia town?

Mr. Green: No, I do not, nor do I concede that the condition at Nashville is an artificial one.

Mr. Watkins: If reshipping privileges were taken away from Nashville she would not then have the advantages over Atlanta, Macon and Augusta that she now has.

Mr. Green: If the reshipping privileges were taken away from Nashville, Atlanta would be deprived of the opportunity of trading in one primary market which she now reaches.

Mr. Watkins: I am talking about what Nashville would be deprived of.

Mr. Green: And Nashville would be deprived of the opportunity of competition with Louisville, St. Louis, Evansville and these other reshipping points.

351 Mr. Watkins: These products move to Nashville from points north and west on the local rate into Nashville, do they not?

Mr. Green: I understand so.

Mr. Watkins: And they move out of Nashville on the balance of the through rate?

Mr. Green: I think not.

Mr. Watkins: How do they move?

Mr. Green: On the local rate from Nashville.

Mr. Watkins: The effect of it is however that the ultimate amount paid by the shipper is the balance of the through rate?

Mr. Green: The effect of it is that the ultimate amount paid by the shipper is the same as the direct shipment; each line in the route gets the same revenue as on a direct shipment.

Mr. Watkins: It is just protecting the through rate?

Mr. Green: Exactly.

Mr. Watkins: When the elevator, the miller or the dealer in Nashville buys the grain he does not know where he is going to sell it, whether in Nashville or beyond Nashville, and there is nothing

in the original bill of lading that indicates any destinatio
352 beyond Nashville. That is true, is it not?

Mr. Green: That is my understanding. I know very li
tle about the practice as to Nashville. We are not a Nashville line
We were there but a short time and handled but little of this busi
ness.

Mr. Watkins: Do you not understand that the Nashville dealer might sell his grain there in Nashville?

Mr. Green: I do not think there is any doubt about that. It comes in there and he may sell it locally or ship it out.

Mr. Watkins: And he does not know when he buys it whether he will ship it to Atlanta, Macon, Augusta or Savannah.

Mr. Green: I cannot say what he knows. He may know beforehand exactly where he is going to ship it.

Mr. Watkins: He may in some cases, but there is nothing on the contract of carriage that indicates any shipment to any particular point or any point beyond Nashville?

Mr. Green: I think not. You understand we do not handle any of the business.

Mr. Watkins: The balance of the through rate from Nashville varies according to the point of origin.

353 Mr. Green: According to the point of destination.

Mr. Watkins: Yes, according to the point of destination.

Mr. Green: That is correct.

Mr. Watkins: Do you know of any other place that has the identical rules and regulations governing the reshipping of grain as does Nashville?

Mr. Green: I do not think there is any essential difference between the rules at Nashville and the rules at the Ohio River. My recollection is that the last time we undertook to revise them, before we gave up the Tennessee Central Road, which was the first of last April, we tried as far as possible to make them uniform. There may be some difference in the method of handling the business, that is as to the actual practice, growing out of the varying channels through which the business moves.

Mr. Watkins: Take Cincinnati as an illustration then.

Mr. Green: Cincinnati and Louisville have reshipping privileges, and where the rates from points of origin north of the river are lower than the combination through Cincinnati or Louisville or any other crossing, the rate south of the river is the full rate,

354 except, I think that Louisville has a rate which is two cents less than the through rate, because the through rate from New Albany is the same as from Louisville, and that includes the cost of getting over the river. I think you can say that the bulk of the grain reshipped from Louisville is handled two cents less than the Louisville rate.

Mr. Watkins: The rate from Louisville to Atlanta, is 24 cents. Does that rate exist whether the grain originates at Louisville or at some other point? Does the rate south of Louisville always get 24 cents, or sometimes less?

Mr. Green: I just stated that the bulk of grain reshipped at Louisville pays two cents less than the Louisville rate.

Mr. Watkins: Then the grain sometimes moves from Louisville to Atlanta at 22 cents?

Mr. Green: Yes, sir; a good deal of it.

Mr. Watkins: And that change is caused by the point of origin on the stuff?

Mr. Green: It is necessitated by equalizing the combination on Cairo and I think Evansville.

Mr. Watkins: And if it is a part of a through shipment it pays less than the through rate?

355 Mr. Green: Yes sir.

Mr. Watkins: And if that is a part of the through shipment how long a time may that grain be kept?

Mr. Green: I do not remember what the rule is.

Mr. Watkins: How do you determine at Louisville whether or not it is a part of a through shipment, or a local rate? The grain is all mixed together in the same elevator.

Mr. Green: By expense bills. You cannot preserve the identify of the grain.

Mr. Watkins: If a man has an expense bill for part of a through movement he may ship out the grain for less than the Louisville rate?

Mr. Green: If he has an expense bill for a car load of grain originating at Peoria or some point in Illinois with a combination through Cairo that is less than through Louisville he cannot get the benefit of the proportional rate south of Louisville but ships then on the Louisville proper rate. That two cents difference does not always equalize, but it is the maximum shrinkage.

Mr. Watkins: Who gets that shrinkage, the road north of the river?

356 Mr. Green: No sir; it gets its local down to the river.

Mr. Watkins: Then the shipment moves for two cents less?

Mr. Green: The shipment is rebilled from Louisville two cents less than the Louisville proper rate. His total charge on the total shipment is not less via Louisville than it would be via Cairo.

Mr. Watkins: That is just to equalize it so that it may come through Louisville instead of Cairo?

Mr. Green: Yes sir, but it does not always equalize it because the difference is greater than two cents. In fact at one time his shrinkage at Louisville was three cents.

Mr. Watkins: And that is made because the local into Louisville is higher than the local into Cairo?

Mr. Green: Yes sir; in each case the road north the line gets its full rate.

Mr. Watkins: And not a proportion of the through rate as is done at Nashville?

Mr. Green: There is no pro rating from points north to points

south of the Ohio River. There is a pro rating of several
357 rates from Ohio River crossings to the southeast, whether through Nashville or otherwise; but that is all merely a question of the method of dividing the rates.

Mr. Watkins: Have you given any consideration to the relative amount of loss or damage on car load and less than car load shipments?

Mr. Green: I have not.

Mr. Watkins: From your knowledge as traffic manager you know it would be greater on less than car loads than on car load shipments.

Mr. Green: I would say relatively greater, yes, sir, because the class of traffic, the merchandise traffic, which represents the greatest value and represents the greatest risk, is handled in less than car load lots to a much greater extent than that traffic which moves usually in car loads.

Redirect examination:

Mr. Northrop: Do you want to say anything about the increased cost of transportation in the last five years?

Mr. Green: Well, the Commission has so much information on that subject that I do not think I need to put it in. There has been a very great increase in the cost of transportation in the past decade.

Mr. Northrop: We will just refer to the testimony taken
358 in the A. P. Morgan case.

Mr. Watkins: I have no objection to either side making any reference of that kind they desire.

(After consultation between counsel.) It is agreed that either party may refer to any portion of the testimony in the A. P. Morgan Grain Company against the Atlantic Coast Line, the Railroad Commission of Alabama against the Louisville and Nashville Railroad; the Railroad Commission of Georgia against the Atlantic Coast Line; numbers 1671, 1683, and 1727, of the Commission's dockets.

Examiner Drayton: You said that the modern tendency is for the producer or the manufacturer to deal directly with the consumer and to cut out the jobber. Nashville as a primary grain market furnishes not only grain but some flour, does it not?

Mr. Green: Oh, yes; it is quite a milling center.

Examiner Drayton: Do not the southeastern consumers now buy to a large extent through the jobbers at Nashville?

Mr. Green: I do not know to what extent they buy through jobbers at Nashville. I would say to a very small extent, but their purchases of flour are almost altogether from the mills. In
359 the delivery of flour to the dealer in the South 90 or 96 per cent of it is done under milling in transit on these any quantity rates, so that the dealer at the small station who gets ten barrels of flour, gets the protection of the through rate on flour from the point where the miller bought his grain. That puts the intermediate miller on a parity with the mill which happens to be

located in the grain fields. Certainly in late years the miller has sold the bulk of his grain direct to the dealer. These mills further west, the mills of Minneapolis and that neighborhood that have not the close acquaintance in that territory, prefer to do their business with jobbers, and a good deal of jobbing business is done in that way, not only in the interior south but on the borders of it near the Virginia gateways.

Examiner Drayton: And your idea is that the granting of the prayer of this petition would extend the field of the operations to the jobber?

Mr. Green: Unquestionably it would do that, otherwise they would not want it. But on the other hand it would restrict the field of the outside producers, and the outside miller could not sell flour to Atlanta unless he had some means of supplying his trade locally.

Examiner Drayton: You do not think these jobbers down
360 there would take away trade from Nashville jobbers?

Mr. Green: No sir.

T. M. GALLAGHER, was called as a witness on behalf of the defendants and having been first duly sworn, testified as follows:

Mr. Baxter: What is your name?
Mr. Gallagher: T. M. Gallagher.
Mr. Baxter: What is your occupation?
Mr. Gallagher: Steamboat man.
Mr. Baxter: On what river?
Mr. Gallagher: On the Cumberland River.
Mr. Baxter: How long have you been in the steamboat business?
Mr. Gallagher: About 26 years.
Mr. Baxter: How many lines of steamboats are there now operating in the Cumberland?
Mr. Gallagher: Three packet lines.
Mr. Baxter: How many boats do each of these companies own?
361 Mr. Gallagher: What is known as the Wyman Line owns five boats.
Mr. Baxter: What are their names?
Mr. Gallagher: Steamer Electra, J. B. Richardson, Bob Dudley, Henry Harley, R. Dunbar.
Mr. Baxter: How many do each of the other lines own?
Mr. Gallagher: One each.
Mr. Baxter: What are the names of those lines?
Mr. Gallagher: The Tyner owns the steamer R. Chilters.
Mr. Baxter: What is the tonnage?
Mr. Gallagher: 250 tons.
Mr. Baxter: What is the name of the boat on your line?
Mr. Gallagher: The Robert Ray.
Mr. Baxter: What is its tonnage?
Mr. Gallagher: 325 tons.

Mr. Baxter: When was your company organized, or when does expect to go into the business?

Mr. Gallagher: This is a new boat and has not yet made a trip we are waiting for navigation to open.

Mr. Baxter: Will your company participage in the transportation of grain from Ohio River points to Nashville?

362 Mr. Gallagher: Yes sir.

Mr. Baxter: Did what is known as the Wyman Line participate in the transportation of grain from the Ohio River points to Nashville?

Mr. Gallagher: Yes sir.

Mr. Baxter: What were the rates charged by the Wyman Line per hundred pounds on grain from Ohio River points to Nashville?

Mr. Gallagher: Six to nine cents per hundred pounds.

Mr. Baxter: What was the amount of grain tonnage transported by boat from the Ohio River to Nashville?

Mr. Gallagher: It is estimated from 800,000 to 1,000,000 bushels.

Mr. Baxter: What are the present rates charged for the transportation of grain by your company from Ohio River points to Nashville?

Mr. Gallagher: Seven to nine cents a hundred.

Mr. Baxter: If the rates from Evansville through Ohio River points were ordered by the Commission in this case to be fixed for a period of two years at ten cents per hundred pounds from certain points to Nashville by rail on all grain shipped to Nashville proper, or any distance beyond, what effect if any, would it have

363 upon your company towards inducing said company to establish a line of tow boats for the transportation of grain from said Ohio River points to Nashville?

Mr. Gallagher: There wuld be no question but what we would organize a tow boat line to handle this grain to Nashville from Ohio River points, under those conditions, if the rates were advanced by the railroads.

Mr. Baxter: What effect would the establishment of a rate ten cents per hundred pounds by rail on grain from Ohio River points to Nashville have towards the encouragement of independent tow lines from said Ohio River points to Nashville, Tennessee?

Mr. Gallagher: In my judgment, the tonnage would triple what it is now.

Mr. Baxter: Is it not a fact that there is to be used this grain season a tow line the purpose of which is to transport cross ties out and grain into Nashville from those points?

Mr. Gallagher: Yes sir.

Mr. Baxter: What is the tonnage of that tow line or barge?

Mr. Gallagher: They have two barges, one with a capacity of ten thousand packs and the other with a capacity of five

364 thousand packs, which would approximately be about thirty-five thousand bushels in one tow.

Mr. Baxter: Taking the total tonnage of the packets now avail-

able, the boats now available, on the Cumberland River, do not those boats aggregate a tonnage of 2,375 tons?

Mr. Gallagher: Yes sir.

Mr. Baxter: How many trips a week can those boats make from Ohio River points to Nashville?

Mr. Gallagher: The boat that operates to Evansville makes one trip a week. There are two boats that operate to Paducah, that make two trips a week; there is practically a boat every day.

Mr. Baxter: Is there not now under contract, or under charter, another tow boat line to handle this grain traffic from Ohio River points into Nashville?

Mr. Gallagher: Yes sir.

Mr. Baxter: What is the capacity of that line?

Mr. Gallagher: They have two barges with a capacity of ten thousand sacks; that would be about 50,000 bushels.

Mr. Baxter: Then there will be available on the Cumberland River this season a weekly tonnage of grain amounting to 173,750 bushels, if those boats only made one trip a week?

365 Mr. Gallagher: Yes sir.

Cross-examination:

Mr. Watkins: I believe you said your rates from Cairo to Nashville were seven to ten?

Mr. Gallagher: From Ohio River points?

Mr. Watkins: All Ohio River points.

Mr. Gallagher: No, from six to nine.

Mr. Watkins: But I think you said you put your new rates at from seven to ten?

Mr. Gallagher: No, seven to nine.

Mr. Watkins: Can you make money and haul it at seven?

Mr. Gallagher: Yes sir.

Mr. Watkins: Could you make money by hauling it at six?

Mr. Gallagher: We could make some money.

Mr. Watkins: Could you now, under present conditions?

Mr. Gallagher: Yes sir.

Mr. Watkins: Then you could haul and make a profit at six cents from Ohio River crossings to Nashville?

Mr. Gallagher: Yes sir.

366 Mr. Watkins: In order to meet that competition if you are able to haul all of the grain, the railroads would have to reduce their rates?

Mr. Gallagher: Naturally so.

Mr. Watkins: If the roads were to put their rate at seven cents they would get more business than you at six cents because they move it faster?

Mr. Gallagher: Yes sir, I should think so.

Mr. Watkins: How long during the year is the river navigable?

Mr. Gallagher: About nine months in the lower Cumberland and the Ohio River.

Mr. Watkins: What draught boats can come up to Nashville?

Mr. Gallagher: During the navigable season they can come up there drawing 12 feet.

Mr. Baxter: During the nine months that you say the river is navigable?

Mr. Gallagher: Yes sir; from eight and a half to nine months they can come up there drawing 12 feet.

Mr. Watkins: What amount of grain is now being actually transported on the river?

367 Mr. Gallagher: Navigation has not yet opened.

Mr. Watkins: When does it open?

Mr. Gallagher: From the 15th of November to the 15th of December we look for water.

Mr. Watkins: It has been dry this fall and has not been opened up yet?

Mr. Gallagher: Yes sir; it has been an unusually dry season.

Mr. Watkins: During the last season of navigation how much grain was moved during the season?

Mr. Gallagher: I do not know what the estimate was for last season.

Mr. Watkins: Can you approximate it?

Mr. Gallagher: I do not think there was as much as usual; I do not think the crops were as large the season before as they have been this season.

Mr. Watkins: Could you not give me some kind of an idea? How many boats were plying during the last season of navigation?

Mr. Gallagher This tow boat proposition is an irregular one. There have been times when six or seven boats were making trips.

368 Mr. Watkins: During last season?

Mr. Gallagher: Yes sir.

Mr. Watkins: Six or seven boats?

Mr. Gallagher: Yes sir.

Mr. Watkins: How often did they ply between the Ohio River and Nashville?

Mr. Gallagher: The packets which go after corn regularly can handle five hundred to eighty hundred sacks. It can make the trip as it frequently does, in about five days. A larger boat handling ten or fifteen thousand sacks takes about ten days to make the round trip.

Mr. Watkins: The amount of grain moved by the roads is very much larger than that moved by the boats?

Mr. Gallagher: I judge so; I have no figures.

Mr. Watkins: What is the damage to grain carried by the boats?

Mr. Gallagher: Very little, sir.

Mr. Watkins: In these tow boats how is the grain handled, on an open barge?

Mr. Gallagher: Some are open and then some have cargo decks, which are covered just like boats. They have a tarpaulin cover.

369 Mr. Watkins: And that protects the grain from the weather?

Mr. Gallagher: Yes sir.
Mr. Watkins: Do you haul grain in bulk?
Mr. Gallagher: No sir.
Mr. Watkins: Only in sacks?
Mr. Gallagher: Yes sir.
Mr. Watkins: Who owns this new transportation company you are speaking about?
Mr. Gallagher: Captain Pamatter (?) is the head of the concern; he has several associates.
Mr. Watkins: Is it a corporation?
Mr. Gallagher: No sir.
Mr. Watkins: Is it a partnership?
Mr. Gallagher: Yes sir.
Mr. Watkins: Who are his associates, do you know?
Mr. Gallagher: Yes sir.
Mr. Watkins: Who are they?
Mr. Gallagher: Mr. Robert Wray, C. T. Williams, and T. G. Randall, Jr. I think that is all.
Mr. Watkins: What do these gentlemen do whose names you have mentioned?
370 Mr. Gallagher: Robert Wray is a clerk for his father, in the grain business at Nashville.
Mr. Watkins: Does Mr. Wray's father own an elevator?
Mr. Gallagher: No sir.
Mr. Watkins: He is just in the grain business without owning an elevator?
Mr. Gallagher: Yes sir.
Mr. Watkins: Do any of the railroads own any of the boats on the river?
Mr. Gallagher: No sir.

Redirect examination:

Mr. Baxter: The last grain season you were not in the steamboat business?
Mr. Gallagher: I was out for about six months.
Mr. Baxter: You have a postal card photograph of that new boat, I believe?
Mr. Gallagher: Yes sir.
Mr. Baxter: Does that represent the barge, too?
Mr. Gallagher: Yes sir; the picture is a little bit short, but it shows part of the barge.
371 Mr. Baxter: I will ask you to file that as an exhibit to your testimony.

(The photograph referred to was received in evidence and marked "Exhibit Gallagher No. 1," and is transmitted herewith and attached hereto.)

Mr. Baxter: Can the tow boat company profitably engage in the transportation of grain from Louisville to Nashville at the 12 cent rate which is in effect?
Mr. Gallagher: You mean operate at 12 cents a hundred?

Mr. Baxter: Yes, or less?

Mr. Gallagher: Yes sir; in my judgment they could operate profitably nine or ten cents a hundred out of St. Louis.

JOHN H. BELL was called as a witness on behalf of the intervenors, and having been first duly sworn, testified as follows:

Mr. Lea: What is your name?

Mr. Bell: John H. Bell.

372 Mr. Lea: What is your residence?

Mr. Bell: Nashville, Tennessee.

Mr. Lea: And your occupation?

Mr. Bell: My occupation is a grain dealer.

Mr. Lea: How long and in what way have you been engaged in the grain business in Nashville or elsewhere?

Mr. Bell: In Nashville only for eight years.

Mr. Lea: Are you in business by yourself or as a member of a firm or corporation?

Mr. Bell: I am a member of a corporation; a stockholder in the Bell-Duff Commission Company.

Mr. Lea: What do you understand a primary market to be?

Mr. Bell: I understand a primary market to be a market that accumulates grain from the producers to be distributed to the consuming trade.

Mr. Lea: Is Nashville a primary market?

Mr. Bell: I understand it so to be.

Mr. Lea: What are the other primary grain markets in the territory competing with Nashville?

Mr. Bell: The primary markets that are competitive with Nashville are Cincinnati, Louisville, Henderson, Evansville, Cairo,

373 Memphis, St. Louis, Kansas City, Omaha, St. Joseph and numerous other primary markets in that territory.

Mr. Lea: Is Nashville an active competitor with the primary grain markets enumerated by you?

Mr. Bell: She is.

Mr. Lea: Is it customary for primary grain markets to have organizations of grain dealers?

Mr. Bell: It is customary, and Nashville has such an organization.

Mr. Lea: Are either you or your company a member of the Nashville organization, and give the name of the organization.

Mr. Bell: My company is a member of the Nashville Grain Exchange, and I am a member and officer of my company.

Mr. Lea: Are you an officer of the Nashville Grain Exchange and if so what?

Mr. Bell: I am Vice-President of the Nashville Grain Exchange.

Mr. Lea: What is the object of the Nashville Grain Exchange?

Mr. Bell: It is to promote the welfare of the grain business of Nashville.

374 Mr. Lea: Is the exchange itself organized for profit?

Mr. Bell: It is not.

Mr. Lea: How many members has it?

Mr. Bell: As I remember they have sixty members.

Mr. Lea: How does the membership and size of the exchange compare with the exchanges at other primary markets?

Mr. Bell: I think that the Nashville Grain Exchange is larger and more active perhaps than the exchanges of most markets with which I am acquainted as compared with the size of the market.

Mr. Lea: How many dealers in grain and grain products are there in Nashville who are not members of the exchange?

Mr. Bell: Practically none.

Mr. Lea: Have any statistics been compiled by the exchange relative to the number of elevators both public and private and the value of the same?

Mr. Bell: Such statistics have been compiled.

Mr. Lea: What is the amount invested in public and private elevators?

Mr. Bell: The amount as compiled by the Grain Exchange is $1,550,000.

Mr. Lea: Where are these elevators and warehouses located with reference to the river and with reference to railroad
375 facilities?

Mr. Bell: Only two of them are located directly on the river banks, the balance of them are located on the railroad.

Mr. Lea: Some distance from the river?

Mr. Bell: Some distance from the river, yes sir.

Mr. Lea: If, for any reason, the movement of grain should change so that the bulk of the grain business of Nashville moved by river instead of rail, could these elevators be used?

Mr. Bell: They could not conveniently.

Mr. Lea: Have any statistics relative to the amount of capital employed in the Nashville grain trade, other than that invested in the elevators, been compiled by the exchange?

Mr. Bell: Such figures have been compiled.

Mr. Lea: What is the amount of capital employed in the grain trade?

Mr. Bell: Outside of the cost of the elevators, the grain exchange has compiled a statement showing $1,700,000 as the capital employed other than the cost of elevators in handling it.

Mr. Lea: What does that make the total amount invested
376 in the grain business at Nashville?

Mr. Bell: The total amount is $3,250,000.

Mr. Lea: Have any statistics relative to the average amount of stock carried by the grain dealers of Nashville been filed, and if so, please give the same; give it separately.

Mr. Bell: Such statistics have been compiled. The average amount of stock carried during the year 1907 was wheat, 400,000 bushels, corn, 350,000 bushels, oats, 575,000 bushels.

Mr. Lea: Where is the bulk of the grain handled by the Nashville grain dealers, purchased from?

Mr. Bell: It is purchased from the producing states of Tennessee,

Kentucky, Illinois, Indiana, Iowa, Nebraska, Missouri, Kansas, Indian Territory, Oklahoma and Texas.

Mr. Lea: What are the principal points in Georgia and the Southeast to which Nashville grain dealers sell and ship?

Mr. Bell: They sell and ship to practically all points in the southeast, including Alabama, Georgia, Florida, South Carolina and most of North Carolina.

Mr. Lea: What are the markets with which Nashville competes in selling grain in the states named by you?

377 Mr. Bell: They have to compete with all other primary markets in the territory.

Mr. Lea: What transportation facilities has Nashville?

Mr. Bell: They have the Nashville, Chattanooga & St. Louis Railway Company, the Louisville & Nashville Railroad and the Tennessee Central, with its trunk line connections into Nashville by rail; the Cumberland River, for river transportation. They have the L. & N. and the N. C. & St. L., and the Tennessee Central and its connecting lines out of Nashville toward the grain trade direction.

Mr. Lea: Has the river transportation been effective in reducing competitive rates?

Mr. Bell: Assuredly so.

Mr. Lea: State whether this river competition has resulted in the grain dealers having any privilege in regard to reshipping grain or grain products?

Mr. Bell: I have always thought so; and if I had not, the testimony I have heard here would convince me that such is the fact.

(Thereupon at 5:10 o'clock p. m. the hearing was adjourned until tomorrow morning, December 5, 1908, at 10 o'clock a. m.)

378 WASHINGTON, D. C., *December* 5, 1908.
10 o'clock a. m.

Met at 10 o'clock a. m., pursuant to adjournment.

Present, Special Examiner Drayton.

Appearances, Mr. Watkins in behalf of the complainant; Mr. Baxter and Mr. Northrop in behalf of the defendant; Mr. Lea in behalf of the Intervenors, the Nashville Grain Exchange and Nashville Board of Trade.

Whereupon JOHN H. BELL resumed the stand for further examination.

Mr. Lea: We were discussing reshipping privileges at Nashville. State what you understand this reshipping privilege is and give an illustration of it.

Mr. Bell: The reshipping privilege is simply the protection of the through rate through the point at which the shipping is given. For instance, a car of grain moving from the producing section, say from Illinois, would be shipped to Nashville, rehandled and re-

379 shipped from there on the through rate, from the original point of shipment to destination.

Mr. Lea: Do the shippers of Nashville have to pay demurrage, and, if so, when did demurrage begin?

Mr. Bell: They have to pay demurrage according to the rules in effect in that territory. This rule is that cars may stand on the track for 48 hours, after which demurrage is assessed and collected at the rate of $1 per day.

Mr. Lea: It was stated by Mr. Moore, traffic manager of the Atlanta Freight Bureau, in his testimony, that the Nashville Grain dealers were given by the railroads ten days' time, as one of the incidents to the reshipping privilege. Is that correct?

Mr. Bell: It is not correct; Mr. Moore is mistaken.

Mr. Lea: Is free storage or time given by the railroads at Nashville under any conditions or circumstances?

Mr. Bell: Under no conditions whatever.

Mr. Lea: Mr. Moore also stated that there was an elevation charge allowed of three quarters of one cent per hundred. Is this elevation charge allowed to you or to the elevator warehouses to which the grain is handled?

Mr. Bell: The elevation is allowed, handling the
380 grain.

Mr. Lea: Is this figure of three quarters of a cent for elevation profit, or to cover the actual cost of the elevation?

Mr. Bell: It is an arrangement given, as I understand it, to cover the cost of handling the grain.

Mr. Lea: Suppose that grain has already been elevated before it comes to Nashville; is the charge then allowed?

Mr. Bell: On grain that has been elevated and the service paid for by the railroad lines, such grain is not allowed an elevation charge; that is, an elevation charge is not paid for such grain at Nashville.

Mr. Lea: Is this same elevation charge allowed in all primary markets?

Mr. Bell: I understand it is.

Mr. Lea: You have stated, Mr. Bell, that Nashville ships and sells grain in Southeastern Territory. Are you familiar with the trade in that territory?

Mr. Bell: I am.

Mr. Lea: State whether the reshipping privilege is of benefit to the dealers and consumers in the Southeastern Territory, to whom you sell, and if so, why?

381 Mr. Bell: I certainly consider it a benefit to those dealers in that it gives them a near primary market in which they can buy grain, and permits them to buy from a market that can furnish them conveniently and quickly at competitive prices with other primary markets that are further away from the territory, and from which they could not buy grain as conveniently or get it as quickly as they can from Nashville.

Mr. Lea: What would be the effect on the business of these dealers if the reshipping privilege was taken away from them?

Mr. Bell: It would cut out one primary market and destroy that

much competition, to the extent that it would injure the market in Nashville.

Mr. Lea: Who would be benefitted by the continuing of this reshipping privilege, at Nashville, the jobbers or the retailers and consumers of this territory?

Mr. Bell: If anyone were benefitted it would evidently be the jobbers. It certainly would not be the retail trade or the consumers.

Mr. Lea: You stated if anyone would be benefitted it would be the jobbers. Do you mean the jobbers in the territory about Atlanta?

382 Mr. Bell: I mean the jobbers in the Southeastern Territory doing business at what are known as basing points, such as Atlanta, Macon, Augusta and so forth.

Mr. Lea: What would be the effect on the Nashville market if the reshipping privilege was denied to Nashville dealers?

Mr. Bell: It would injure the Nashville market to the extent, at least, that it would demoralize the business there and other arrangements for business would have to be perfected if it were possible to do so.

Mr. Lea: You have stated that the elevator and warehouse facilities at Nashville are some distance from the river. Could this property be used if the reshipping privilege was taken away?

Mr. Bell: It could not.

Mr. Lea: You have stated that the warehouse and elevator facilities at Nashville cost over $1,500,000. What would be the value of the elevators and warehouses there if this privilege were discontinued in Nashville

Mr. Bell: It would be impossible to say just what the value would be, but it would evidently be very much less, because those houses could not be used for the purpose for which they were built,

383 and as they are used now.

Mr. Lea: In your opinion would it amount to a practical confiscation of property?

Mr. Bell: Practically so.

Mr. Lea: Would you invest, as you have invested in your business if Nashville had not had the benefits pertaining to a primary market?

Mr. Bell: I certainly would not.

Cross-examination:

Mr. Watkins: What would the railroads charge for transferring the grain from the river boats to the elevators?

Mr. Bell: There was a charge of one cent per hundred, as I understand it. We have never engaged in that kind of business; we do not handle any river grain.

Mr. Watkins: Some of the men who own the elevators also are engaged in the purchase and sale of grain, are they not?

Mr. Bell: The private elevators, they are, yes sir.

Mr. Watkins: This reshipping privilege applies not only from the points of production, but from other markets like Louisville, does it not?

384 Mr. Bell: Yes sir.
Mr. Lea: One more question.

Redirect examination:

Mr. Lea: You have stated that the charge to the railroads for transferring grain from the river to the warehouse was one cent.
Mr. Bell: One cent per hundred.
Mr. Lea: Could this grain be transferred from the river and shipped over the Tennessee Central without any charge, and if so, why?
Mr. Bell: While I have never handled any grain in that way, I understand that it can be shipped out over the Tennessee Central from the river without any charge, as they have tracks leading to the wharf, and grain can be loaded directly from the boats into their cars.
Mr. Lea: The terminal facilities of the Tennessee Central are on the river?
Mr. Bell: They are on the river, yes.
Examiner Drayton: Of what does that service consist, for which the railroads charge one cent per hundred pounds?
Mr. Bell: That is a transfer across town.
385 Examiner Drayton: It covers drayage, does it not?
Mr. Bell: It is supposed to cover drayage.

Examined by Mr. BAXTER:

Mr. Baxter: Do you know what the grain transfer charge is from the river to your warehouse?
Mr. Bell: Do you mean by a drayage transfer, what it costs to dray on drays?
Mr. Baxter: Yes.
Mr. Bell: That would be in excess of a cent a hundred, but I don't think any freight, any grain, has been drayed. It is too far to be practical to do it.
Mr. Baxter: It would be over a cent a hundred, would it?
Mr. Bell: It certainly would.
Examiner Drayton: And the carriers employ these drays themselves, do they, when they perform that service?
Mr. Bell: No, there is no drayage performed by the carriers. You understand the switching charge of a cent a hundred is simply for a cross town movement, and is in cars; it is 1 cent per hundred, with a minimum of $3 per car.
386 Mr. Baxter: That charge is made to equalize the transfer charge in competition with the transfer companies.

J. B. MCLEMORE, a witness produced in behalf of the intervenors, being first duly sworn, testified as follows:

Mr. Lea: What is your residence and occupation?
Mr. McLemore: I live in Nashville, Tennessee, and am a grain dealer.
Mr. Lea: You have heard the testimony of Mr. John H. Bell,

Vice-President of the Nashville Grain Exchange, with reference to the objects and purposes of its exchange, its size and membership, and cost of the elevators, the capital invested in Nashville and the reshipping privilege given in Nashville. Do you agree with the statements made by Mr. Bell?

Mr. McLemore: Yes sir.

Mr. Lea: Is any free time given the Nashville shippers by the railroads?

Mr. McLemore: No sir.

387 Mr. Lea: It was stated by Mr. Moore, traffic manager of the Atlanta Freight Bureau, in his testimony, that one of the incidents of the reshipping privilege allowed Nashville was free storage given by the railroads, for ten days. Is that correct?

Mr. McLemore: No sir; we have never had that.

Mr. Lea: Where does Nashville buy the bulk of the grain held?

Mr. McLemore: Nashville buys in the producing states of Illinois, Iowa, Kansas, Missouri and Oklahoma.

Mr. Lea: Are you familiar with the condition of the trade in those markets where this grain is sold to Nashville?

Mr. McLemore: Fairly so.

Mr. Lea: Is it sold in bulk or sacks?

Mr. McLemore: No grain moves from the west to Nashville in sacks. It is all moved in bulk. It is loaded at country stations, or loaded direct from the farms, and is dumped in the car and brought to Nashville and rehandled there.

Mr. Lea: Are you familiar with the requirements of the dealers in Georgia and Southeastern Territory and do they require grain to be furnished them in bulk or in sacks?

Mr. McLemore: Practically all grain is finally consumed 388 in sacks. Some grain moves to the Southeast in bulk, to such points as Atlanta and Columbus, and some moves to Macon, and some to Augusta. More particularly, however, it moves to mills outside of Atlanta and Columbus. Practically none of the southern cities buy in bulk. Climatic conditions and the character of the trade require the sacking of grain for those points.

Mr. Lea: What are the sacking facilities at Nashville?

Mr. McLemore: The sacking facilities at Nashville are the largest in the world; at least so far as we have any record of, and certainly the largest in the United States.

Mr. Lea: How much grain and grain products are sacked annually at Nashville, can you approximate it?

Mr. McLemore: No, I don't think I can.

Mr. Lea: Then I will put the question in different form. Suppose the utmost capacity of the Nashville plants were used, how much grain and grain products could be sacked?

Mr. McLemore: Running ten hours a day, 325 cars could be easily handled.

Mr. Lea: Are you familiar with the sacking facilities of St. Louis, Chicago, Louisville, Paducah, Cairo, Cincinnati, and other grain markets?

389 Mr. McLemore: Yes, comparatively so.

Mr. Lea: Compare the sacking facilities of Nashville with each of these markets.

Mr. McLemore: In the City of St. Louis, for instance, there are no sacking machines, since one of the elevators was burned down, and all the sacking is done by hand. There are several sacking machines at Louisville and Memphis and Cairo; but Nashville far outranks them in the facilities for the sacking of grain.

Mr. Lea: Are you familiar with the sacking facilities of Atlanta, Macon, Columbus, Albany, Rome, Athens and other cities in Georgia?

Mr. McLemore: Yes.

Mr. Lea: I wish you would compare them with the sacking facilities of Nashville.

Mr. McLemore: Atlanta has two sacking machines, I think, and Columbus, Georgia, has one sacking machine. I do not know of any others in the Southeast.

Mr. Lea: Could the requirements and needs of the trade in the Southeast market be made satisfactory if the reshipping privilege was denied Nashville and Nashville as a primary market destroyed?

390 Mr. McLemore: No, sir; I think at times they would be in very bad shape down there; they would not be able to get it through from the West in time. Nashville certainly is essential to a large part of the consuming trade of the Southeast.

Mr. Lea: What would be the effect on the trade in the Southeast if this reshipping privilege was discontinued at Nashville?

Mr. McLemore: It would have the effect of removing one primary market, at which grain is accumulated and distributed, and would of course, to that extent, remove that much competition.

Mr. Lea: Would it increase the jobbing trade of Atlanta and Macon and those cities in that territory?

Mr. McLemore: It would probably aid Atlanta more than any of them, and would aid all of them—the jobbing centers, to a certain extent.

Mr. Lea: In your opinion would the effect of it be to increase the price to the retailer?

Mr. McLemore: Wherever the competition is removed, it is human nature to advance the price if possible. Nashville's ability to buy from the producing territory enables them to ac-

391 cumulate stocks of grain and carry them, I think, at a less cost than these Southern cities could accumulate and distribute from stocks of grain, and if you would remove this foreign competition it is more than likely that the local competition would not be keen enough to maintain the price at the present level, at an economic cost.

Mr. Lea: If there was an increase in price who would pay it?

Mr. McLemore: The consumer, undoubtedly.

Mr. Lea: Then your conclusion, from your familiarity with the grain trade, is that the effect of discontinuing the reshipping priv-

ilege at Nashville, or establishing a differential, would be to increase the price of the products to the consumer?

Mr. McLemore: Yes sir.

Cross-examination:

Mr. Watkins: Your idea is, then, that Nashville by increasing the number of markets having the reshipping privilege, increases competition and decreases the price to the Southeastern territory?

Mr. McLemore: No, I did not say that.

392 Mr. Watkins: Well, is that a fact?

Mr. McLemore: I have never been albe to see, myself how re-hipping could be extended beyond Nashville.

Mr. Watkins: I did not ask about that; I asked you if it is not true, according to your idea that making Nashville as an additional place having these privileges gives more competition and tends to decrease the price to the consumer?

Mr. McLemore: My statement was that from the economic standpoint wherever competition exists, in rightful form, legitimate competition, conducted upon the proper basis, that it would tend to lower the price to the consumer and not increase it. I mean healthy competition.

Mr. Watkins: Then the greater the competition the greater the tendency; would not that be so?

Mr. McLemore: It might be; it depends on conditions.

Mr. Watkins: How much volume of business do you do annually?

Mr. McLemore: We ship from 1,500,000 to 2,000,000 bushels year.

Mr. Watkins: That is your total business?

Mr. McLemore: Yes.

Mr. Watkins: What portion of that do you ship under

393 the reshipping privilege?

Mr. McLemore: We do no business at all but what moves in from the West. We do nothing locally. We ship all of our grain, and consequently that would come under the reshipping privilege.

Mr. Watkins: You do not buy any grain moves from the river or does not have the reshipping privilege?

Mr. McLemore: No.

Mr. Watkins: How much annually does the railroad pay you in this method it adopts of protecting the through rate?

Mr. McLemore: They do not pay us anything, unless you——

Mr. Watkins: Their rules provide that you shall make a claim do they not?

Mr. McLemore: Yes.

Mr. Watkins: Under those claims—you may not call it a payment—what is the total amount of those claims you present and receive the money for annually?

Mr. McLemore: That would have to be compiled, of course.

Mr. Watkins: Can you give an estimate of it.

Mr. McLemore: No, I have not the slightest idea. It

394 is routine work that is done in the office, and of course I know very little bout it.

Mr. Watkins: It is considerable, is it not?

Mr. McLemore: It is a protection of the through rate.

Mr. Watkins: I understand what it is, but the effect of it is by protecting the through rate, you make considerable more money than you would if the through rate was not protected?

Mr. McLemore: That is self evident.

Mr. Watkins: I want to know how much that is.

Mr. McLemore: I don't *your*. We make no more money from a transportation standpoint by having this rate protected than we would if we did not.

Mr. Watkins: It will not be very much trouble, will it, for you to make a statement of your monthly receipts from this matter and furnish it to the Commission, and furnish our Commission a copy also?

Mr. McLemore: Mr. Lea, it is simply the protection of the through rate——

Mr. Watkins: We know what it is.

Mr. McLemore: If it is necessary to compile the information——

Examiner Drayton: Will you kindly do that?

Mr. McLemore: Yes, if the Commission thinks it is necessary, we will get it out.

Mr. Watkins: If it is not a great deal of trouble we would be glad to have it.

Mr. Lea: And give us a copy too.

Examiner Drayton: And furnish counsel a copy.

Mr. Watkins: Mr. Moore did not say that the railroads gave any free time at Nashville. What he testified to was that grain might remain in the elevators ten days and be shipped out without any elevation charges? Is that true?

Mr. McLemore: No sir; we pay half a cent a bushel.

Mr. Watkins: For the first ten days?

Mr. McLemore: 15 days, I think. That is a matter of tariff regulation on the part of the elevators.

Mr. Watkins: And something with which the railroads have nothing to do?

Mr. McLemore: Yes sir.

Mr. Watkins: Who owns those elevators in Nashville?

Mr. McLemore: Of course we know nothing about the ownership of those except by hearsay or rumor. I don't know who owns the elevators there.

Mr. Watkins: There are some of them owned wholly or partly by the railroads, are there not?

Mr. McLemore: None that I know of. I know that the new elevator there is supposed to have been built and operated by the C. & Southern, but since their withdrawal from Nashville that elevator has practically ceased operation, and it is owned by a ralty company in which we understand that the I. C. and Southern old a controlling interest; but I have no knowledge of that myself.

Examined by Mr. BAXTER:

Mr. McLemore; in this case, it has been proven here that the re
shipping and protecting of the rate from Ohio River crossings i
seven cents on the grain that is shipped into Nashville and reshipped
into the Southeast. If the Commission in this case were to order
that the rate be established at ten cents from the Ohio River cross
ings to Nashville on all grain shipped into Nashville, whether con
signed to Nashville proper or beyond, what would be the effect o
such an order on you in resorting to the river in order to obtain a
lower rate for this grain?

Mr. McLemore: Unless we were to abandon our property
397 entirely we would be forced to resort to some other means.
We would resort—let me get your question. You asked me
if we would be compelled to resort to the river. Yes; of course w
could not compete with Southern trade on an inbound rate of ten
cents flat, and rather than have our property confiscated we would
endeavor to use it in some manner with the river accommodations
restored as they were before; but it would certainly give us a very
bad set-back for the time being.

Examiner Drayton: I wish you would amplify just a little the
reasons why if this rebilling privilege were cut off at Nashville the
jobbing centers, such as Atlanta and Macon, could not supply the
trade in Southeastern territory?

Mr. McLemore: Well, now, of course there are a large number
of smaller dealers not necessarily less than carload dealers, who now
do buy from Nashville. So far as our own trade is concerned, it is
made up largely of those customers in the South who in the years
of prosperity, the last five or ten years, have risen from the less
than-carload purchaser to the carload purchaser. Prosperity has
had a good deal to do with cutting down the less-than-carload
business.

398 These dealers are supplied, or rather have facilities that
are not large. Many of them cannot accommodate more
than a car or so at the out-side. They are compelled to buy their
supplies at nearby markets, in order to get them quickly. In times
when business is brisk, they must buy cars close together. If trade
is dull, of course they buy them further apart, but owing to the un
certainties of transportation and the delays which take place, they
are compelled to buy at Nashville at times.

If they went to other markets delays would take place. They
would be frequently out of grain and would be forced to buy from
these other jobbing centers, which have not the facilities for ac
cumulating large stocks of grain.

Examiner Drayton: About what percentage of your business is
carload business?

Mr. McLemore: Practically all of our business is carload business

Mr. Watkins: Is it then an advantage to the consuming trade
to have a large supply of grain as near to it as possible?

Mr. McLemore: That is always the case.

Mr. Watkins: Is there any reason why Atlanta, Macon,
399 Augusta and other towns could not if they had privileges
that made it possible increase their capacities?

Mr. McLemore: I do not think, in fact I know that Southern cities; I do not believe that these southern cities could accumulate stocks of grain and keep them in certain seasons of the year particularly.

Mr. Watkins: The climatic conditions——

Mr. McLemore: Would be against it.

Mr. Watkins: They are not widely different, so far as Atlanta and Nashville are concerned?

Mr. McLemore: No; not so far as those two cities are concerned, but I was thinking of the cities further south. But even then, they are not close enough to the producing territory to accumulate these stocks. You have to be somewhere in range and in touch with the producing territory.

Mr. Watkins: Why so? Cannot a car be shipped a thousand miles as well as it can be shipped 500 miles?

Mr. McLemore: All things are possible——

Mr. Watkins: Is it not done?

Mr. McLemore: Oh yes.

400 Redirect examination:

Mr. Lea: You have indicated that the grain trade could eventually be reestablished on the river even if the reshipping privilege was discontinued at Nashville. Would not the demoralization of the trade at Nashville inevitabley result in the trade to other markets and bring about conditions so that it would be hard for Nashville to get that trade back?

Mr. McLemore: Yes; I think it would be practically confiscation of our elevator facilities at Nashville.

Mr. Lea: The same would be true of the capital employed in the business?

Mr. McLemore: Yes. The capital would be idle unless it were transferred to some other channel.

Mr. Lea: But the capital tied up in that business would be practically confiscated?

Mr. McLemore: Yes, it would be.

Mr. Lea: Is there no local territory around Nashville that you could reach if this privilege were taken away from you?

Mr. McLemore: The consuming territory is below us. That is where they do not raise the grain as they do in our section of
401 the country. We ship to Atlanta——

Examiner Drayton: What I mean is whether there are any local points within, say, 50 miles, that you could profitably reach if that privilege were taken away?

Mr. McLemore: No. They raise enough for their domestic supply, I think.

Mr. Lea: We would like to stipulate, Mr. Watkins, that Mr. Murray Hogan and Mr. F. E. Gillette, were called and testified to the same facts as Mr. Bell and Mr. McLemore testified to.

Mr. Watkins: Yes sir.

Mr. Lea: And in addition to that I would like to ask Mr. Gillette a few questions.

Mr. Baxter: Before you do that, I would like to ask Mr. McLemore one or two questions.

Examined by Mr. BAXTER:

Mr. Baxter: Mr. McLemore, I will ask you whether or not you know of any system in vogue or that has been in vogue at Nashville whereby the manipulation of expense bills and the reshipping business of this grain has been practiced at Nashville?

402 Mr. McLemore: No sir. I have been at Nashville four years and I have never been able to figure out any plan whereby we could work any advantage by any manipulation of any expense bills whereby any drawback or rebate has been possible.

Mr. Baxter: Do you know of a single instance during your experience at Nashville where there has been any manipulation either by your company or any other company?

Mr. McLemore: No sir; I do not.

Examiner Drayton: What was the occasion for putting in that rule, by the carriers, forbidding it, if it was not practiced?

Mr. McLemore: I think it was mainly due to the trouble at Louisville. They adopted a rule for all markets. As far as I know, they have safeguarded in every way they could the situation at Nashville, the use of these expense bills. I think the rule was lived up to in good faith.

Examiner Drayton: Just how was this manipulation possible or advantageous at Louisville and not at Nashville?

Mr. McLemore: I don't know exactly, but I understand at Louisville they were billing out grain on brick expense bills and

403 corn on oats, and oats on corn, almost any way. You have the record, you know——

Mr. Baxter: Since you have spoken of the Louisville record, you do not know of your own knowledge what the facts were in relation to that case, do you?

Mr. McLemore: No, I do not know anything about it.

Mr. Baxter: Then, all you have testified about in regard to that is merely hearsay?

Mr. McLemore: Merely hearsay. I do not know whether there is a word of truth in it.

Mr. Baxter: You do not know, as a matter of fact, that the Interstate Commerce Commission of its own volition investigated the practices that were then in existence at Louisville, do you?

Mr. McLemore: No sir; I do not.

Mr. Baxter: Nor do you know the fact that after that investigation those parties who were found guilty of manipulating those expense bills were indicted and fined in the Federal Court for such practices, do you?

Mr. McLemore: No sir, I do not know that.

Mr. Watkins: You would not violate the law yourself, would you?

Mr. McLemore: No, I think I would think a long time

404 before I would violate any Federal law.

Mr. Watkins: And if you did it you would not tell your competitors in business that you had done it?

Mr. McLemore: No, I would not be that big a fool either.

Mr. Watkins: And if any of your competitors are doing it, you do not think they would tell you?

Mr. McLemore: No, I don't think they would be as big fools as that either.

Mr. Baxter: Then I will ask Mr. McLemore, have you violated it?

Mr. McLemore: I have not.

F. E. GILLETTE, produced as a witness in behalf of the intervenors, being first duly sworn, testified as follows:

Mr. Lea: Have you been engaged in the grain business elsewhere than at Nashville?

Mr. Gillette: I have been in the grain business in Nashville about three years, Memphis about two years, and Oklahoma about
405 three years.

Mr. Lea: Are you familiar with the methods of the grain growers in Oklahoma and adjoining states, as to how they handle their crops after harvesting?

Mr. McLemore: Yes, I am especially familiar with the customs in Oklahoma and Kansas, and fairly familiar with the customs in northern and western states.

Mr. Lea: Does the Nashville market buy largely of the grain harvested in Oklahoma?

Mr. Gillette: They do. Especially is this true of their seed oats.

Mr. Lea: How long is it after the harvesting of the crop before they receive their money for their crops?

Mr. Gillette: In Oklahoma they start marketing immediately upon their starting to harvest. Oklahoma is a new country and their improvements are very limited, and their facilities for holding the grain at home are practically nothing; so that as soon as the grain is harvested it goes directly on the market. This is true more especially in Oklahoma than any other points in the North and West.

Mr. Lea: What becomes of this grain after it is purchased
406 by the Nashville grain dealers, and how long is it before it is sold to the trade, and where is a large part of it sold?

Mr. Gillette: Grain is purchased by the Nashville dealers for sale to the Southeast as a seed product mostly, and it is held from sixty days I would say, to seven months, from sixty days to seven months before it is finally sold out in the Southeast.

Mr. Lea: Is grain stored in Nashville?

Mr. Gillette: It is stored at Nashville, waiting for the demand.

Mr. Lea: Supose the reshipping privilege was discontinued at Nashville and other primary markets, what, in your opinion, would be the effect upon the grower in Oklahoma and these other states in regard to the time in which you would have to carry a crop before marketing it and realizing on it?

Mr. Gillette: If the farmer in Oklahoma was forced by any condition to only market his product there as the demand was for it, it would force him to be out of his money from thirty days to eight months.

Mr. Lea: Until the jobbing trade in the Southeastern
407 Territory could handle it?

Mr. Gillette: Well, until the seeding time came for the use of that grain.

Mr. Lea: As a practical question, suppose the marketing of this crop were postponed for the length of time stated by you, what effect would this have upon the grower, on account of the condition of the roads and highways and the transportation facilities in Oklahoma at that season of the year, which would be fall or early winter?

Mr. Gillette: Well, it would be a peculiar hardship on the farmers of Oklahoma. There is a time right after harvest, of about sixty to ninety days, before they begin their fall work of plowing for wheat and so forth. One of the reasons that they do not do this earlier is on account of the fact that in the summer in the South and West it is dry, and it is almost impossible for them to plow. So there is a time right there that they do not have much else to do but market their grain. And not only are they busier in the fall and winter, but the wet season comes on, and it would work a great hardship to have to haul their grain through these heavy roads and in fact on the bottom land it would be almost impossible,
408 it would take twice as much time and it would cost twice as much to do that.

Another thing, the railroad facilities out there are limited as compared with the older states, and those farmers have to haul their grain, most of them, a great deal further than they do in the older states, where they have more markets.

Cross-examination:

Mr. Watkins: Are there no elevators at Oklahoma?

Mr. Gillette: There are several elevators, but they are little country elevators, just large enough to accumulate grain until they get a carload or two carloads, and then it is shipped.

Mr. Watkins: There are large elevator facilities at Witchita and Kansas City, are there not?

Mr. Gillette: I am not familiar with the elevator facilities at either Kansas City or Witchita. I was speaking of Oklahoma.

Mr. Watkins: There are elevator facilities at St. Louis, are there not?

Mr. Gillette: Yes; St. Louis is one of our primary mar-
409 kets.

Mr. Watkins: Are there any elevator facilities at Little Rock?

Mr. Gillette: Little Rock has one elevator, quite a considerable elevator, and I think that is about all. I don't know what else.

Mr. Watkins: Grain is always at its lowest price when it is marketed, is it not?

Mr. Gillette: Not necessarily so, no.

Mr. Watkins: Does it not advance considerably from the time of marketing to the time it is sold in the Southeast, six or seven months later?

Mr. Gillette: Sometimes that is so, and sometimes that is not.

Mr. Watkins: Generally that is true, is it not?

Mr. Gillette: I have some corn now that lacks a good deal of advancing. In fact it has declined. I would be very glad if it would advance.

Mr. Watkins: Conditions being normal, is not that the tendency, for any product to advance between the time it is grown and the time it is marketed?

Mr. Gillette: I do not think so. I do not think grain
410 any more than pays in advance the carrying charge. That is, the shrinkage in the grain itself and the elevator charges are such that, I think, as a general proposition, they would take up all the advance in the grain. Otherwise we would buy all we could at the start and hold it.

Mr. Watkins: That would make the advances, then, just about commensurate with the cost of holding it?

Mr. Gillette: I do not think they would quite do that. I think if it was shown that they did do that there would be no trouble making money.

Mr. Watkins: Does Oklahoma ship more grain East than it does to Galveston?

Mr. Gillette: She ships all her oats product East. Her Wheat what wheat is not milled in Oklahoma, goes for export. Some of that is exported at New Orleans, but practically all of that, I think, goes to the Texas mills and Galveston for export.

Mr. Lea: Could the Oklahoma product be handled through St. Louis and Kansas City and other points named by Mr. Watkins if the reshipping privilege were discontinued to primary markets?

Mr. Gillette: No sir; it is not practical to move them
411 that way.

Mr. Watkins: Is not the rate the same to Oklahoma City and St. Louis as it is to Memphis?

Mr. Gillette: I think possibly it is, but the grain is produced in the North and West and the movement in this way, and to go to St. Louis you would be going against that. The people above them work out that way. There may be a little moved to St. Louis, but I do not think that amounts to anything. I do not think that is enough to be considered.

E. S. SHANNON, a witness produced by and on behalf of the intervenors, being first duly sworn, testified as follows:

Mr. Lea: State your residence and occupation.

Mr. Shannon: Nashville, Tennessee; I am Secretary of the Nashville Board of Trade.

Mr. Lea: What is the Nashville Board of Trade?

Mr. Shannon: It is a Commercial organization in Nashville for the purpose of advancing the interests of the city com-
412 mercially and otherwise.

Mr. Lea: It is practically the only commercial organization in Nashville?

Mr. Shannon: The only one there.

Mr. Lea: Is part of the work of the Board of Trade to collect and compile statistics in regard to the various industries of Nashville and the relation of these to the commercial prosperity of Nashville?

Mr. Shannon: It is.

Mr. Lea: You have heard the statement made by Mr. Bell relative to the grain business at Nashville and the transportation facilities of Nashville and the reshipping privilege. From your knowledge, gained as Secretary of the Nashville Board of Trade, do you agree with the statements made by Mr. Bell?

Mr. Shannon: I do.

Mr. Lea: What has been the work of the Board of Trade in connection with the development of the Cumberland River?

Mr. Shannon: They have been very active in looking after this work, handled through Congress, and also through the Commercial organizations, the producers and the Board of Trade. They have all been very active.

413 Mr. Lea: Is the Cumberland River recognized as an effective competitor of the railroads?

Mr. Shannon: It is.

Mr. Lea: Has the improvement of it been increasing? Has the Government been pushing the work of the improvement of the Cumberland River, or has it been gradually stopping?

Mr. Shannon: It has been on the increase in the way of appropriations, and also actual work.

Mr. Lea: Have you got any statistics relative to the work on the Cumberland River?

Mr. Shannon: Yes. I have here a synopsis of the information contained in the annual report of the Chief of Engineers of the United States Army for the year 1905, with respect to the Cumberland River.

Mr. Lea: I will ask you to file that.

Mr. Shannon: It is practically what Mr. Compton gave.

(The paper referred to was filed, and marked "Exhibit Shannon No. 1").

Mr. Lea: Is the grain business in Nashville recognized as one of the large industries of the city?

Mr. Shannon: Yes sir.

414 Mr. Lea: Suppose the Nashville Grain market was demoralized, or practically destroyed by the discontinuance of the reshipping privilege or the establishment of a differential, what would be your opinion as to the effect upon the general business of Nashville?

Mr. Shannon: Well, the opinion of our Board of Trade is that it would be very damaging, and that is my opinion also. In other words, it would handicap immediately and injure considerably our commercial conditions there, because in my opinion, it would seriously handicap and injure the business which represents a good part of our volume of business for a year there.

J. P. DAVIS, a witness produced by and on behalf of the intervenors, being first duly sworn, testified as follows:

Mr. Lea: Where do you live?
Mr. Davis: I live in Barstow County, Georgia.
Mr. Lea: What is the town?
Mr. Davis: In a little place called Taylorsville, on the Seaboard Air Line.
415 Mr. Lea: What is your occupation?
Mr. Davis: Retail merchant.
Mr. Lea: Do you handle any grain or grain products business?
Mr. Davis: Yes sir; I handle some.
Mr. Lea: How long have you been engaged in the grain business?
Mr. Davis: About six years.
Mr. Lea: What is the character of your trade?
Mr. Davis: Retail trade.
Mr. Lea: In what competitive markets can and do you purchase that grain and grain products?
Mr. Davis: I purchase from Nashville, Cincinnati and Louisville.
Mr. Lea: Do you buy in carloads or less than carloads?
Mr. Davis: I buy both ways; mostly in less than carloads.
Mr. Lea: Is your situation as retail merchant similar to the average retail merchant in Georgia towns that are not basing points?
Mr. Davis: Yes sir.
Mr. Lea: What would be the effect upon your business
416 if five cents per hundred were added to all shipments in less-than-carload lots?
Mr. Davis: It would almost put me out of business.
Mr. Lea: Where would you have to purchase your grain and grain products from?
Mr. Davis: I would be compelled to purchase from my nearest jobbing point.
Mr. Lea: What would that be?
Mr. Davis: Cartersville.
Mr. Lea: Would the effect of that be to make you pay a larger price for your grain and grain products?
Mr. Davis: It would make the consumer, whom I furnish, pay more for it.
Mr. Lea: Would you pay——
Mr. Davis: I would pay and then the consumer would have to pay me back.
Mr. Lea: Would there be practically the same effect upon your business if Nashville was destroyed as your nearest primary market?
Mr. Davis: Yes sir; Nashville is my nearest primary market.
Mr. Lea: And if Nashville were eliminated as one of the
417 competitive markets from which you buy the effect would be you would have to buy from the nearest jobbing point, which is Cartersville?
Mr. Davis: Yes sir.
Mr. Lea: And that also would result, I suppose, in making the consumer pay a higher price?
Mr. Davis: Yes sir; I would have to get it from somebody and he would be the only one I could get it from.
Mr. Lea: What is the custom of the trade of small dealers in

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Mr. Davis: In a little place called Taylorsville, on the Seaboard Air Line.
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Mr. Davis: Retail merchant.
Mr. Lea: Do you handle any grain or grain products business?
Mr. Davis: Yes sir; I handle some.
Mr. Lea: How long have you been engaged in the grain business?
Mr. Davis: About six years.
Mr. Lea: What is the character of your trade?
Mr. Davis: Retail trade.
Mr. Lea: In what competitive markets can and do you purchase that grain and grain products?
Mr. Davis: I purchase from Nashville, Cincinnati and Louisville.
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Mr. Davis: I buy both ways; mostly in less than carloads.
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Mr. Lea: Would you pay——
Mr. Davis: I would pay and then the consumer would have to pay me back.
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Mr. Davis: Yes sir; Nashville is my nearest primary market.
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Mr. Davis: Yes sir.
Mr. Lea: And that also would result, I suppose, in making the consumer pay a higher price?
Mr. Davis: Yes sir; I would have to get it from somebody and he would be the only one I could get it from.
Mr. Lea: What is the custom of the trade of small dealers in

Georgia in regard to purchasing grain or grain products in sack or in bulk?

Mr. Davis: They purchase in sacks.

Cross-examination:

Mr. Watkins: Are you subpœnaed to appear here?
Mr. Davis: No sir.
Mr. Watkins: You came in your own interest?
Mr. Davis: Yes sir.
Mr. Watkins: Or in the interest of the Nashville people?
Mr. Davis: I do not know the Nashville people in my coming to Washington.

418 Mr. Watkins: At whose request did you come?
Mr. Davis: I come partly through my own request.
Mr. Watkins: What was the other part?
Mr. Davis: Mr. Brooks, of Cartersville, asked me to come.
Mr. Watkins: What does Mr. Brooks do in Cartersville?
Mr. Davis: He is a miller there.
Mr. Watkins: Do you buy any of your products from Mr. Brooks, the Cartersville flour mill man?
Mr. Davis: Yes sir; I buy some from him.
Mr. Watkins: What is the rate from Cartersville to your town?
Mr. Davis: Six cents.
Mr. Watkins: That is a Georgia rate, is it not, purely a domestic rate?
Mr. Davis: I suppose so.
Mr. Watkins: And it would not be affected by an interstate rate fixed by the Commission, would it?
Mr. Davis: I don't know.
Mr. Watkins: A Cartersville mill buys its grain in the West and grinds it in Cartersville, does it not?
Mr. Davis: I don't know. I suppose so.

419 Mr. Watkins: And there is very little grain raised around Cartersville. You know that, do you not?
Mr. Davis: There isn't much.
Mr. Watkins: If Cartersville buys it grain in carload lots, which it does, and ships it out under the Georgia rate, you could buy as cheap from Cartersville, if the differential was established, as you could now, could you not?
Mr. Davis: I don't know.
Mr. Watkins: If Nashville were put out of business, you would do more trade from Louisville and Cincinnati, you would buy from Louisville or Cincinnati, and you say you do buy from Louisville now, with Nashville in business, do you not?
Mr. Davis: Yes sir.
Mr. Watkins: Mr. Brooks of Cartersville, the man who partly induced you to come here, owns an elevator in Nashville, does he not?
Mr. Davis: I suppose he does. I don't know that of my own knowledge.
Mr. Baxter: You were not asked to come here in the interest of any railroad, were you?
Mr. Davis: No sir.

420 Mr. Lea: That is our case.

Mr. Watkins: I will ask leave to file any minutes of the Southern Wholesale Grocers' Association having reference to this matter, our purpose being to show that Mr. Lea acted as an individual and not for the Association.

Mr. Baxter: You will also give us the right to put in any cross questions that we may see proper to ask?

Mr. Watkins: I am not going to ask him any questions; I simply want to file the minutes.

Mr. Northrop: We reserve the right to put in anything we may see fit in reply to the minutes.

Mr. Lee: Did you put in the record anything in regard to the Iowa milling?

Mr. Watkins: I believe you said you would agree to that.

It is agreed that Weems A. Smith of Augusta, Georgia, would, if present, testify that he received a car of Texas rust proof oats during the early part of the year 1900, on a billing from Iowa, that had been reshipped.

Mr. Northrop: It is further agreed that Mr. Smith does not know where those oats were grown.

Mr. Watkins: I would like to recall Mr. Hudson for a
421 question.

E. M. Hudson, a witness previously called and sworn, was recalled by the complainant and testified as follows:

Mr. Watkins: You are a dealer, as you have already testified, in Atlanta?

Mr. Hudson: Yes sir.

Mr. Watkins: Can you buy in the same producing market as Nashville dealers can?

Mr. Hudson: Yes sir.

Mr. Watkins: Can you buy there as cheaply as Nashville can?

Mr. Hudson: I think I can. I believe I can.

Mr. Watkins: That is all.

(Informal conference followed.)

Mr. Watkins: You will remember, Mr. Drayton, when Mr. Moore was on the stand he said he would fix more definitely the percentages of cars that took the carload rate and that took the less-than carload rate. It is not necessary to file that, but we will
422 refer to the statements of Professor Adams in his Forty Years of Railroad Rates, in which these differences are given; it being a Commission publication, of course it is permissible to refer to it. So we will merely refer to that for the correct percentages.

Mr. Baxter: What is the date of that publication?

Mr. Watkins: 1902.

Mr. Baxter: The percentages given by Mr. Moore were incorrect?

Mr. Watkins: Yes, the percentages given by Mr. Moore were incorrect, and we will give them as Professor Adams gives them.

Mr. Northrop: Can you not refer to the page of the book?

Mr. Watkins: In briefing the case I will refer to the page of the book, yes.

Mr. Lea: I would like to recall Mr. Gillette for a question or two.

423 F. E. GILLETTE was recalled in behalf of the intervenors, and testified as follows:

Mr. Lea: Are red rust proof oats grown in Kansas and Illinois?

Mr. Gillette: Yes sir.

Mr. Lea: Have you ever handled any of these from the St. Louis gateway?

Mr. Gillette: I handled through St. Louis right along.

Examiner Drayton: Are they grown in Iowa?

Mr. Gillette: I do not think they are grown quite that far north, although I am not sure. I know they are grown in Illinois and Kansas, but I am not sure whether they are grown quite as far north as Iowa.

Mr. Lea: I would like to ask Mr. McLemore a question.

J. B. MCLEMORE was recalled as a witness in behalf of the intervenors, and testified as follows:

Mr. Lea: Do oats or grain that move from the St. Louis gateway show an Iowa expense bill?

424 Mr. McLemore: A shipment of oats leaving St. Louis, from the St. Louis gateway, the billing might show the originating point as an Iowa point, when as a matter of fact the oats might have been raised in Kansas——

Mr. Watkins: Or Texas.

Mr. McLemore: Or Texas, for that matter. Because they have reshipping privileges at St. Louis, they have the same privileges there that they do at Nashville. So the mere fact that they appeared on the expense bill or the receipt given to the consignee at destination would not indicate truly the originating point of that car at all.

Mr. Lea: That is our case.

Examiner Drayton: Is that all?

Mr. Watkins: Yes sir.

We think the case ought to be submitted on briefs and oral argument.

(Informal discussion took place as to the time to be allowed for the preparation of briefs and so forth.)

Examiner Drayton (after discussion): So I understand it Mr. Watkins desires until the 1st of January, and then the defendants and intervenors will have until the 25th for reply; and then

425 Mr. Watkins desires until the 2nd or 3rd of February for his reply brief?

Thereupon, at 11:30, the hearing was adjourned.

426 Southern Railway Company.

WASHINGTON, D. C., *Dec. 24th*, 1908.

Hon. Edw. A. Moseley, Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Referring to stenographer's minutes before the Interstate Commerce Commission in case of W. S. Duncan et al. vs. N. C. & St. L. Ry. et al., Docket No. 6198.

There are quite a number of errors, some of them substantial, made by the stenographer in Mr. Green's testimony.

I beg to point these out as follows and request that same be corrected on the official record filed with the Commission:

Page 315, line 6, the word "or" should be "of", and in line 19 the word "the" before the word "reshipping" should be stricken out.

Page 316, line 12, the word "sending" should be changed to "to send".

Page 317 the word "at" should be changed to "along", and the word "Kentucky" in line 2 should be changed to "Cumber-
427 land". The word "or" in line 3 should be "of". Line 19 the — "diverting" should be "converting".

Page 318, line 5, the word "Atlanta" should be "Chattanooga", line 10 the word "it" should be stricken out and the words "at all" substituted. Line 21 the word "a" should be "the".

Page 319, line 3, the words "giving the" should be replaced by the words "given to", and on line 4 the words "an advantage" should be stricken out. Line 19 the — "Noonan" should be "Newnan".

Page 320, line 2, the word "of" should be "plus". Line 3 the word "to" should be inserted between the words "is" and "a".

Page 321, line 7, the words "and south" should be "on the Southern" and the word "Daccoa" should be "Toccoa". Line 8 the words "it can be shipped" should be "she can ship". Line 14 the word "Noonan" should be "Newnan". Line 20 the word "from" should be "over".

Page 322, line- 1-2, the word "greater" should be stricken out. Line 3 the words "that ship" should be stricken out and the words "on car loads" substituted. Line 5 the word "can" should be stricken out. Line 19 the word "on" should be "of".

Page 323, line 19, the word "are" should be inserted be-
428 tween the words "rates" and "now".

Page 324, line 6, the word "seller" should be "consumer". Line 14 the word "products" should be inserted immediately after the word "food", and the last word on the line should be "in" instead of "from".

Page 325, line 1, the word "they" should be inserted before the word "were". Line 12 the letter "D" should be inserted immediately after the letter "C" and the words "houses and butter" should be "house products". Line 14 should read "and South, and to a large portion of Virginia. As soon as the".

Page 326, line 21, the word "me" should be "it".

Page 327, line 9, the word "when" should be "if". Line 15 word "varies" should be "varied". Line 20 the word "any" sho be inserted before the word "quantity".

Page 328, line 8, the word "refers" should be "referred". Li 15 the word "power" should be stricken out and immediately bef the word "order" "an" should be substituted for "the". Line the word "no" should be "an any".

Page 329, line 3, the words "rates of the" should be inserted i mediately before the word "man", and the words "and ever 429 be replaced by the word "but". Line 12 the word "al should be stricken out. Line 14 the word "on" should "as" and the word "to" should be "from".

Page 330 Line 1, the word "on" should be "From". Line 3 th word "inter" should be inserted between the words "continue" an "state". Line 20 the word "have" should be "are".

Page 331 line 13 the words "it would" should be "you could Line 15 the word "interstate" should be "intrastate". Line 19 th words "to graduate" should be "a graduated." Line 20 the wor "very" should be "other".

Page 332 line 7 the word "is" should be "was". Line 9 the name "Viles" should be "Biles". Line 19 the word "into" should be "in".

Page 333 line 2 the word "is" should be "are". Line 10 the word "to" should be "at".

Page 334 line 11 the word "car" should be "load". Line 15 the name "Northrop" should be "Green".

Page 335 line 14 the words "of the River" should be inserted im mediately after the word "east". Line 19 the words "it has" should be "These rates were". Line 20 the words "with the" should be sub stituted for the word "a" immediately after the word "competition" and the words "the routes" should be substituted for the words 430 "a route" immediately after the words "Galveston and".

Page 336, line 2, the word "if" should be "of". Line 4 the word "that" should be "This was a" and the word "that" should be inserted immediately before the word "led". Line 5 the word "them" should be "The Commission". Line 7 the word "had" should be stricken out. Line 8 the word "paid" should be "made".

Page 337, line 5, the word "whose" should be replaced by "who is". Line 6 the words "has been" should be replaced by the word "grain". Line 10 the word "to" immediately after the word "Atlanta" should be "or" and the word "his" should be "its". Line 11 the word "the" before the word "car" should be "a" and the words "which is" should be stricken out.

Page 339, line 10, the word "on" should be "of".

Page 340, line 4, should read "Mr. Green: I could not say from memory".

Page 342, line 1, the word "cannot" should be "could then". Line 13 the word "no" should be "not so". Line 14 the word "point" should be "many points". Line 15 the number "38" should be "138".

Page 347, line 12, the word "April" should be "July".

431 Page 348, line 5, the word "at" should be inserted between the words "handled" and "two".

Page 349, line 16, the word "cannot" should be "can". Line 17 the word "but" should be "otherwise he".

Page 350, line 4, the word "at" should be inserted before the word "two". Line 6 the word "total" should be "through". Line 11 the word "often" should be inserted before the word "greater". Line 12 the word "his" should be "the". Line 16 the word "roads" should be "road". Line 17 the word "line" should be "river". Line 22 the word "several" should be "all".

Page 351, line 1, the word "after" should be inserted before the word "all".

Very respectfully,

C. B. NORTHROP,
Ass't General Counsel.

(At Hagley Plantation, S. C.)
28.

432 Hulse & Allen.

WASHINGTON, *January* 12, 1909.

Mr. John J. McAuliffe, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: The corrections in the testimony of Mr. Green in I. C. C. Docket #1698, sent to us by Claudian B. Northrop, Esq., have been forwarded to all interested parties. While some of these changes are material, the major portion are corrections of typographic errors and revision generally.

We enclose Mr. Northrop's letter for your files.

Yours truly,

HULSE & ALLEN.

433

47.

United States Commerce Court. Filed Oct. 18, 1911. G. F. Snyder, Clerk.

Stenographer's Minutes.

Before the Interstate Commerce Commission.

Docket No. 1698.

W. S. DUNCAN & COMPANY et al.

vs.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY CO. et al.

AT WASHINGTON, D. C., *September* 27-28, 1910.

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436 Before the Interstate Commerce Commission.

Docket No. 1698.

W. S. DUNCAN & COMPANY et al., Complainants,
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al., Defendants.

WASHINGTON, D. C., *September* 27, 1910—
10 o'clock a. m.

This case came on to be heard before Commissioner Clements at the office of the Commission, in Washington, D. C.

Present: Commissioner Clements.

Appearances:

William A. Wimbish, Esq., for the Complainants.

Perkins Baxter, Esq., for the Louisville & Nashville Railroad Company.

437 S. F. Andrews, Esq., for the Nashville, Chattanooga & St. Louis Railway Company; The Atlantic Coast Line Railroad Company; the Cincinnati, New Orleans & Texas Pacific Railway Company; the Alabama Great Southern Railroad Company; the Georgia Southern & Florida Railroad Company; the Illinois Central Railroad Company; the Central of Georgia Railroad Company; the Seaboard Air Line Railway (S. Davies Warfield, R. Lancaster Williams and E. C. Duncan, Receivers of the Seaboard Air Line Railway), the Atlanta & West Point Railroad Company; the Western Railway of Alabama; and the Southern Railway.

Messrs. Pitts & McConnico, for the Nashville Grain Exchange, Intervener.

438 *Proceedings.*

Commissioner Clements: Gentlemen, we here this morning to take up the further hearing of the case of W. S. Duncan & Company and others against the Nashville, Chattanooga & St. Louis Railway Company and others, in which a report was originally made and an order following the report. The effective date of the order was postponed from time to time, and has never yet gone into effect. This was done on account of the situation in regard to certain practices involved in this case that were also involved in the general hearing which the Commission was then investigating; and that general investigation having been concluded, and certain of the practices involved at Nashville were also involved in the general hearing, the Commission did not feel that it ought to make an order that might have the effect of permitting the carriers to hedge about the practices and execute them in such a way as to permit a defeat of the published rate. Inasmuch as the order in the Duncan case which has been withdrawn appeared to be absolutely against the

practices, it was thought by the Commission that it might be well to modify it so as not to appear to condemn anything at Nashville that was not condemned at other places. There can be no
439 reason for condemning the practices there that had been permitted elsewhere. It was deemed most suitable that inasmuch as the case had been investigated and an order made and a modification had been asked and postponed, that the carriers themselves maintaining the practice at Nashville should show cause why they should deny them at the same time at these other places. And that will be the order of the proceeding.

Are you ready to proceed? It might be well at this time, however, to get the appearances for the record. Mr. Wimbish, do you represent the Complainants?

Mr. Wimbish: I do.

Commissioner Clements: Let us have the appearances for the railroads. Does Mr. Andrews represent all of them?

Mr. Andrews: I represent all that I represented in the original case.

Mr. Baxter: I represent the Louisville & Nashville.

Mr. Pitts: We represent the interveners. Pitts & McConnico represent the interveners, the Nashville Grain Exchange.

Commissioner Clements: Well, we can proceed now to take testimony. Whom will you call first?

Mr. McConnico: Major E. B. Stahlman.

440 E. B. STAHLMAN, called as a witness on behalf of the interveners, having been first duly sworn, testified as follows:

Mr. McConnico: Your name is Major E. B. Stahlman?

Mr. Stahlman: Yes, without the Major.

Mr. McConnico: Where do you reside?

Mr. Stahlman: At Nashville, Tennessee.

Mr. McConnico: How long have you lived in Nashville?

Mr. Stahlman: I first went to Nashville in 1863.

Mr. McConnico: And you have stayed there ever since?

Mr. Stahlman: I temporarily had my headquarters in Chattanooga, a little while, and returned to Nashville in the fall of 1865, and have resided in Nashville ever since.

Mr. McConnico: What is your present avocation?

Mr. Stahlman: I am the publisher of a newspaper, a daily newspaper.

Mr. McConnico: Is that the "Nashville Banner"?

Mr. Stahlman: Yes, sir.

Mr. McConnico: Are you the president, also, of the real estate company that owns the largest modern office building in Nash-
ville?

441 Mr. Stahlman: Yes, sir.

Mr. McConnico: Have you now any connection with any railroad?

Mr. Stahlman: None whatever; and have not had since 1895.

Mr. McConnico: What connection did you form in the beginning with any railroad company?

Mr. Stahlman: I was with the Louisville & Nashville.

Mr. McConnico: And when did that start, Major?

Mr. Stahlman: In 1863.

Mr. McConnico: In what capacity?

Mr. Stahlman: We were retimbering the tunnels on the line of road about 35 miles north of Nashville, that had been burned out during the War. That was my first work in connection with that road. We had a large number of men employed there—about 1100—and I was the clerk of that work.

Mr. McConnico: What was the next position that you occupied with that road; and state when that employment began?

Mr. Stahlman: I went from that point to a point in Kentucky and had charge of a lot of men. That was in 1864 or 1865—1864, and I entered the service of the Southern Express Company, which carried me to Chattanooga. I was transferred from Chattanooga to Nashville in 1865. I was elected cashier of the Southern
442 Express Company and afterward travel or route agent in charge of agencies in my portion of the State, which position I occupied up to the fall of 1871. My headquarters were in Nashville all the time, and then I returned to the service of the L. & N. as their contracting agent.

Mr. McConnico: At Nashville?

Mr. Stahlman: At Nashville. Yes. I think it was the fall of 1870 instead of 1871.

Mr. McConnico: How long did you hold that last-mentioned position at Nashville? Go on and state all the positions that you ever held with the railroad company.

Mr. Stahlman: I held that position until 1876, my office being on Market Street near the river landing. In 1876 I was made General Agent and had charge of an office of the Company in Nashville. I held that position until 1878, when I was appointed General Freight Agent. In 1879 I was made Traffic Manager of the L. & N., during which period, between 1879 and 1880, the L. & N. Company acquired the lines from Nashville to St. Louis and from Louisville to Cincinnati; also the lines south of Montgomery to Montgomery, and New Orleans, Pensacola Junction & Pensacola, and built the line from Pensacola through to the River in the di-
443 rection of Tallahassee. I held that position until 1881, when I retired, and returned to Nashville. For two and a half years I engaged in the stock yard enterprise, built stock yards. Then I was elected Vice President of the Louisville, Albany & Chicago Railroad and had my headquarters in Louisville. I remained there until 1884, at which time I was asked to return to Nashville by the L. & N. Company. Shortly afterwards I was elected Third Vice President of that Company, and remained with it until 1891, I think it was. My health gave way and I tendered my resignation and spent several months abroad and returned, and upon my return I was elected Commissioner of the Southern Railway & Steamship Association, with headquarters in Atlanta. I occupied that place until October, 1895, since which time I have had no connection with any railroad, steamship company, steamboat company, and have no stock in any railroad or steamboat company or in any other trans-

portation corporation. Have none now. I am now trying to serv the public.

Mr. McConnico: Have you any especial interest in the grain rate at Nashville or any other point?

Mr. Stahlman: Not a dollar's interest in any mill, grain house o elevator. Yes, I have, too. I have five hundred dollars' interest in a warehouse that I acquired many years ago. I would be very
444 glad to get my money back. It cost me a hundred.

Mr. McConnico: Major Stahlman, what were your duties as contracting agent of the Louisville & Nashville Railroad Company? In 1872 your service began, you say.

Mr. Stahlman: To secure as much business over the lines coming into Nashville and to get as much business for shipment out over that road as it was possible to do. That was my calling. That is what I endeavored to do.

Mr. McConnico: At that time, Major, state the termini of the Louisville & Nashville Road, the parts of the line that had been constructed at that time.

Mr. Stahlman: The Louisville & Nashville then owned a line from Louisville to Nashville, and nothing south, when I began this contracting agency. It had a line, a branch line, that left the main line at Bowling Green, Kentucky, extending to Memphis. It had no lines south of Nashville.

Mr. McConnico: How long have you been familiar with the commercial and traffic conditions at Nashville, and especially with the movement of traffic up the Cumberland River?

Mr. Stahlman: Well, since 1870 and 1871. When I took this position. I was more or less familiar with it before, for I was the cashier of the Southern Express Company and the traveling
445 agent, and interested in all transportation matters. We had the bulk of the express business that the boats brought to us for shipment from Nashville by express, and then we delivered the stuff to the boats and familiarized every man connected with the express business with the situation on the river.

Mr. McConnico: How active was the Cumberland River at that time as a carrier of freight into Nashville from the Mississippi and Ohio River crossings?

Mr. Stahlman: It was, I might say, not only quite active but very active. We had a line of boats between St. Louis and Nashville. We had boats between Cairo and Nashville, Evansville and Nashville, and New Orelans and Nashville, and Cincinnati and Nashville and even Pittsburgh and Nashville. It was nothing unusual to see four or five or six steamboats at the landing at one time; not an unusual thing at all.

Mr. McConnico: I will ask you, Major, if you ever had compiled some extracts from some advertisements, just some specimen advertisements of the boats going out of Nashville during the year 1870 and some specimens as early as 1872?

Mr. Stahlman: Yes, sir.

Mr. McConnico: I will ask you if that is that memoran-
446 dum (handing paper to witness).

Mr. Stahlman: Yes, that is the memorandum.

Mr. McConnico: From what paper was that taken? From what daily paper?

Mr. Stahlman: The old Union American, of Nashville, one of the oldest papers ever published in Nashville.

Mr. McConnico: In a general way, Major, what did those advertisements show about the activity of the boat lines on the Cumberland River at that time?

Mr. Stahlman: It showed the Nashville & Cairo Packet Company, three steamers, the "Tyrone," "John Lumsden" and "Talisman," every Monday, Wednesday and Friday. Reduced rates to St. Louis, Chicago and all points on the Missouri River; also to Memphis, Napoleon, Vicksburg, Red River and New Orleans, and signing through bills of lading to all the above points. Freight taken to all available points on the Arkansas and White Rivers.

Now, this was a standing advertisement. It is taken out of the American of January 1, 1870, and was the advertisement that appeared during the months when the river was navigable, and it was navigable from six to eight months; sometimes nine months in the year. Always at the same time, same date, there appeared
447 this advertisement, extending over the same period of time:

Regular packet from Nashville to Evansville and all intermediate points on Cumberland and Ohio Rivers.

The staunch passenger and freight steamer "Alpha" will ply as above during the season, making weekly trips leaving Nashville every Tuesday evening at 4 o'clock, etc.

On January 4 appeared:

"John Lumsden" for Cairo, St. Louis, Memphis and New Orleans.

"Alpha" for Smithland and Evansville.

"Spray" for Evansville, Louisville and Cincinnati.

January 7, "Ella Hughes" for up river points.

January 9, "Emma Floyd" for Louisville and Cincinnati.

March 5th——

Commissioner Clements: Just a general summary of that is about all that seems necessary.

Mr. McConnico: Please file that memorandum as Exhibit No. 1 to your testimony.

Mr. Stahlman: Very well.

(The memorandum referred to was received in evidence and filed, marked "Exhibit No. 1, Mr. Stahlman.")

448 Mr. Stahlman: The advertisement does not show all the movement of all the boats that came to Nashville. There weer many boats that did not advertise. Agents represented them and they enlisted these boats without advertising in the newspapers.

Mr. McConnico: I will ask you if that memorandum you have filed is anything but a specimen of advertisements that were running in the papers at that time.

Mr. Stahlman: That is all; just a specimen.

Mr. McConnico: I hand you this photograph of the wharf at Nashville, and will ask you, if you can, to locate any date prior to which that picture must have been made, and to tell how you can locate that date. (Handing picture to witness.)

Mr. Stahlman: I should say that this picture was made along in 1864 or 1865.

Mr. McConnico: Do you know when the old suspension bridge at Nashville was built?

Mr. Stahlman: I do not remember, but I think it was along in 50—you mean the first suspension bridge?

Mr. McConnico: I mean the one built just after the War.

Mr. Stahlman: We had a bridge across the river before that but I don't think that was a suspension bridge. The first suspen-
449 sion bridge was built after the War. Just the date I do not remember.

Mr. McConnico: And that bridge does not show in that picture?

Mr. Stahlman: No, sir; so that this picture indicates that it was before that bridge was built. I think that bridge probably was built about 1865, or along there. I cannot remember positively; some of these other gentlemen may.

Mr. McConnico: I will ask you to please file that photograph as Exhibit No. 2 to your testimony.

(The photograph referred to was received in evidence and marked "Exhibit No. 2, Mr. Stahlman.")

Mr. McConnico: Was that last photograph which you have just filed any unusual scene at Nashville in those days?

Mr. Stahlman: No, sir; we had such scenes as that frequently.

Mr. McConnico: I hand you this photograph, Major, which purports to be a photograph made, we will say within the last three or four years, at Nashville, and I will ask you if that is any unusual scene at the wharf at Nashville now, at this present time.

Mr. Stahlman: No, sir; it is not.

450 Mr. McConnico: I will ask you if you will file that as Exhibit No. 3 to your testimony?

Mr. Stahlman: Yes, I will do that.

(The photograph referred to was received in evidence and marked "Exhibit No. 3, Mr. Stahlman.")

Mr. McConnico: Is there any elevator at Nashville now known as the River and Rail Elevator, run by a Mr. Ray, that is on the Cumberland River and, at the same time, on the tracks of the L. & N. Railroad Company?

Mr. Stahlman: Yes, sir; there is.

Mr. McConnico: I hand you this photograph, and will ask you if that is a correct photograph of that elevator.

Mr. Stahlman: Yes, sir. I will say that the connection with the Louisville & Nashville means a connection with the Chattanooga also, because in the interchange of traffic, and switching agreement, they both have access to the elevator. It is a part of the joint terminal system.

Commissioner Clements: Will you file that as Exhibit 4?

(The photograph referred to was received in evidence and marked "Exhibit No. 4, Mr. Stahlman.")

Mr. McConnico: I will ask you if the Tennessee Central is a Rail-

road Company that enters Nashville and connects in East
451 Tennessee with the Southern and has an inclined track constructed at Nashville up north of the wharf, the track running down to the edge of the river so that you can now unload directly from the boats on the river into the cars on the track.

Mr. Stahlman: I can tell by the picture there.

Mr. McConnico: I hand you this photograph and I will ask you if that is a photograph of that inclined track as it is at present.

Mr. Stahlman: Yes, sir. And this Tennessee Central Road is built to reach a good deal of that Southeastern territory in competition with the Chattanooga Road and the L. & N.

Mr. McConnico: I will ask you to file that last-mentioned photograph as Exhibit No. 5.

(The photograph referred to was received in evidence and marked "Exhibit No. 5, Mr. Stahlman.")

Mr. McConnico: Is this photograph a photograph of the tracks of that Tennessee Central Railroad that leads from the incline last mentioned up to the wharf and up to the station of the Tennessee Central that is right opposite or beside the wharf at Nashville?

Mr. Stahlman: Yes, sir. Shall I file that?

452 Mr. McConnico: Yes, as Exhibit No. 6.

(The photograph referred to was received in evidence and marked "Exhibit No. 6, Mr. Stahlman.")

Mr. McConnico: I hand you this photograph and ask you if it is a photograph of a portion of the yards of the Tennessee Central Railroad beside the river, in the neighborhood of the wharf at Nashville.

Mr. Stahlman: Yes, sir; it is.

Mr. McConnico: Will you file that as Exhibit No. 7?

(The photograph referred to was received in evidence and marked "Exhibit No. 7, Mr. Stahlman.")

Mr. McConnico: Is this (handing photograph to witness) a photograph of a part of those same railroad yards up nearer the wharf?

Mr. Stahlman: Yes, it is.

Mr. McConnico: Will you file that as your Exhibit No. 8?

(The photograph referred to was received in evidence and marked "Exhibit No. 8, Mr. Stahlman.")

Mr. McConnico: Is this a photograph of a new bridge that has been built immediately south of the wharf at Nashville, that has been constructed high enough to permit steam boats to pass under the bridge?

Mr. Stahlman: This is north of the wharf—no, south of
453 the wharf; that is right. Yes, it is.

Mr. McConnico: File that as your Exhibit No. 9.

(The photograph referred to was received in evidence and marked "Exhibit No. 9, Mr. Stahlman.")

Mr. McConnico: I will ask you if this photograph (handing same to witness) shows a picture of a railroad bridge on the L. & N. across

the Cumberland River, in the foreground, and just behind that bridge a bridge that has been recently constructed, that is high enough to permit of steamboats passing under it.

Mr. Stahlman: Yes, sir; we recently finished two bridges across the Cumberland River, and they were both constructed in such a way as to permit passage and avoid obstruction to river navigation. I will say the other bridge, belonging to the city and county, was constructed years ago, the same way. The railway bridge could not be elevated to that point because of the heavy grades it would require going on to the bridge and coming off. Consequently, they have a draw to the railroad bridge across the river, so constructed as to avoid obstruction or delay to navigation.

Mr. McConnico: That draw-bridge is the one in the foreground of the last picture. Will you file the last picture as your Exhibit No. 10?

454 Mr. Stahlman: Yes, sir.

(The photograph referred to was received in evidence and marked "Exhibit No. 10, Mr. Stahlman.")

Mr. McConnico: I hand you this picture and ask you if this photograph is correct of the lower wharf at Nashville, taken from the east side of the river.

Mr. Stahlman: Yes, sir. The wharf is on the west side of the river.

Mr. McConnico: And this photograph is made from the——

Mr. Stahlman: East side.

Mr. McConnico: File that picture as your Exhibit No. 11.

(The photograph referred to was received in evidence and marked "Exhibit No. 11, Mr. Stahlman.")

Mr. McConnico: Are you familiar, Major Stahlman, with the situation and conditions at Nashville that constrained the inauguration and the maintenance of the reshipping practices at Nashville?

Mr. Stahlman: Yes, sir.

Mr. McConnico: I mean now the reshipping practices on grain, grain products and hay that moved from or through Mississippi and Ohio River crossings via Nashville into Southeastern consuming territory.

455 Mr. Stahlman: Yes, sir.

Mr. McConnico: At what time were those practices and privileges extended at Nashville in the beginning?

Mr. Stahlman: I think in 1869, possibly not until 1870, after the Nashville & Chattanooga Railroad had acquired control of its Northwestern Division, as it was called, extending from Nashville to the Mississippi River at Hickman, Kentucky, and crossing the Tennessee River at Johnsonville.

Mr. McConnico: At that time did the Nashville, Chattanooga & St. Louis Railway lines extend from Nashville to Chattanooga and to Atlanta in the Southeast?

Mr. Stahlman: Yes, sir; the Nashville & Chattanooga Company's road extended from Nashville to Chattanooga. And, by the way, I might say this: I think the geography will bear me out in it—that

the line through Chattanooga and Nashville from Augusta, Charleston and Atlanta is the shortest to the western country. The city of Charleston and the city of Augusta were so deeply interested in reaching the western country that both cities invested a large sum of money in the stock of the Nashville, Chattanooga & St. Louis Railroad and became very active in its construction; the object being, as old Judge King used to say, and the people from Charleston,
456 to connect the cotton-producing country with the grain fields of the West. And as a consequence, the road was built; and my recollection now is, it was finished in 1852, and from the date of its completion it began to be the center, the western center, of the central grain market for shipment of grain and grain products to the southeast and that whole section of the country.

Mr. McConnico: Now, that was when, Major?

Mr. Stahlman: Beginning with its opening, its first opening.

Mr. McConnico: From Nashville to Atlanta?

Mr. Stahlman: From Nashville to Atlanta, and Augusta and Charleston, all through that country.

Mr. McConico: That was before its extension from Tennessee to the West?

Mr. Stahlman: I am getting to that.

Mr. McConnico: I beg your pardon.

Mr. Stahlman: It was before there was any connection with Memphis; before there was any connection with Cairo; before there was any connection with Evansville, or Louisville or Cincinnati. The Nashville & Chattanooga, as soon as finished, became the distributing point for western produce and sale to that whole South-
457 ern country.

Commissioner Clements: That was built after the Western Atlantic road was built from Atlanta to Chattanooga?

Mr. Stahlman: I do not recall now when the Western Atlantic road was built.

Commissioner Clements: I do not know. Of course, it is all a matter of memory, but I have an impression that the Western Atlantic road was built along from '45 to '50.

Mr. Stahlman: I think it was.

Commissioner Clements: And I suppose the Nashville, Chattanooga & St. Louis was a link that was built afterwards.

Mr. Stahlman: That is the point. They had a road reaching from Charleston to Atlanta and from Atlanta to Chattanooga, and the road from Chattanooga to Nashville was built for the purpose of making a western connection; and, as I say, Nashville, therefore, was the completion of the Chattanooga road and became a distributing point from which western produce, the traffic that we are discussing here now, was shipped to the whole Southeastern country. And it remained in that condition, without any reshipping privileges, of course, because of no necessity for them at that time. There were no rail connections north or west of Nashville, and until as late as '69 or '70 conditions did not arise that seemed to
458 make it essential or necessary to engage in these reshipping arrangements.

Commissioner Clements: Was not the Louisville & Nashville road in there then?

Mr. Stahlman: It was finished in 1859.

Mr. McConnico: Only from Louisville to Nashville?

Mr. Stahlman: Only from Louisville to Nashville; it had no lines south. And I do not suppose that the Nashville & Chattanooga road particularly cared to inaugurate a reshipping arrangement for the benefit of the L. & N. Company's line at that time. At all events, it was not inaugurated until '69 or '70.

Commissioner Clements: As a general proposition, in those days every road was a road to itself, pretty much, and had no through arrangements either for travel or for shipment.

Mr. McConnico: Major Stahlman, in that connection I hand you this blue print map and ask you if that shows the Mississippi River, the Wabash, the Ohio, the Cumberland and the Tennessee, with the relative location of the rail lines of the Nashville, Chattanooga & St. Louis and the Louisville & Nashville Railroad Companies, in white, as those lines were after the N. & C. Railroad had
459 extended its line so as to cross the Tennessee River at Johnsonville and to come to the Mississippi River at Hickman, and after the L. & N. extended its line to Decatur from Nashville into the Southeastern territory. (Handing blue print to witness.)

Mr. Stahlman: Yes, it is a substantially correct map of the situation.

Mr. McConnico: Will you file that map as exhibit No. 12 to your testimony?

Mr. Stahlman: Yes, sir.

(The blue print referred to was received in evidence and marked "Exhibit No. 12, Mr. Stahlman.")

Mr. McConnico: How did all of the grain and the produce that the Nashville, Chattanooga & St. Louis carried, from its construction from Nashville into the Southeast, get up to Nashville, Major Stahlman?

Mr. Stahlman: By the Cumberland River, up to the time that the Louisville & Nashville Railroad was built, and this line was acquired by the Nashville & Chattanooga from between Nashville and Hickman, Kentucky. The L. & N. brought some of the grain, a considerable portion of the grain, from Louisville and Cincinnati, which was shipped through Nashville over the Nashville & Chattanooga.

460 Mr. McConnico: Was the Nashville, Chattanooga & St. Louis connecting with the Southeast from Nashville before the L. & N. was built from Nashville to Louisville?

Mr. Stahlman: I did not catch that. Please repeat that.

Mr. McConnico: Was the Nashville, Chattanooga & St. Louis railroad constructed from Nashville to this Southeastern consuming territory before the L. & N.'s line was built between Louisville and Nashville?

Mr. Stahlman: Yes; seven or eight years before that; it was finished seven or eight years before.

Mr. McConnico: Then, up to that time, as I understand, Major, all of the grain moving to the Southeast from the grain sections of the country at that time would come into Nashville over the Cumberland River?

Mr. Stahlman: Yes, sir.

Mr. McConnico: And would go from thence out over the N. & C.?

Mr. Stahlman: Yes, sir. That is right.

Mr. McConnico: At what time did the Nashville, Chattanooga & St. Louis build its connections west of Nashville to Johnsonville and to Hickman?

Mr. Stahlman: I think it acquired control through ownership of a majority of the stock as early as 1869, although it was
461 not actually made a part of the Nashville & Chattanooga Company's property until a year or two later; but the road was controlled and managed by the Nashville & Chattanooga, and at that time there were arrangements made for the erection of an elevator at Hickman and at Johnsonville, and, naturally, the Nashville & Chattanooga wanted to draw the grain from Mississippi and Ohio River points to Hickman or Johnsonville, if it could, so as to feed that part of its system; and the New Madrid Bend section of the Mississippi was the heavy grain section at that time and previously, and that grain had all been coming into Nashville by the boats plying between St. Louis and Nashville.

Mr. McConnico: How about the Wabash?

Mr. Stahlman: The Wabash also. They ran boats especially up the Wabash River to bring that grain down to its mouth and bring it up the river to Nashville. This large territory on the Illinois side of the Mississippi River—for that matter, on both sides—between St. Louis and Hickman, produced a great deal of grain of all kinds, and they had boats running from St. Louis to Memphis and New Orleans, and the Nashville & Chattanooga Company wanted that business, to divert at least a portion of this large busi-
462 ness to its line at Hickman, Kentucky, instead of allowing it all to come up the Cumberland River by boat. It was not practicable to bring that stuff via Hickman or Johnsonville at a rate remunerative to the rail lines and the steamboat lines against the direct steamboat line to Nashville. In other words, it cost more to bring the stuff from the point of production to Hickman or Johnsonville, elevate it and then put it on the cars and send it to Nashville than the steamboats were charging between those points and Nashville, going all the way by water. And it was to protect its lines west of Nashville that, with the consent of the lines south of Chattanooga, it was agreed that Nashville merchants who bought grain on the river, bringing it through Hickman or Johnsonville, should have rates of transportation that would not exceed the rates from the original point of shipment if it came by boat to Nashville and then took the rate from Nashville; and in order to do that this line divided its rate, or at least gave the Nashville merchant the benefit of the concession that was necessary, which benefit was prorated over the line with which the Nashville & Chattanooga Railroad connected.

Now, that is the reason why the reshipping arrangement started.

463 Commissioner Clements: When did you say that was?

Mr. Stahlman: It started along in '69 or '70; I cannot be positive. I know the Nashville & Chattanooga secured absolute control—that is, it is a matter of record—actual control of that road and made it a part of its system, covered by its own capital stock, as early as '72; but it owned and substantially controlled the road two or three years before that time, before the reorganization and the acquisition was made effective through issue of one lot of securities.

Mr. McConnico: Now, was it at that early time, and for the reasons you have given, that the N. C. & St. L. began the practice of reshipping at Nashville?

Mr. Stahlman: Yes.

Mr. McConnico: I will ask you to state, Major Stahlman, whether the Nashville, Chattanooga & St. Louis Railway did that voluntarily, or was it the natural conditions or situation which constrained or compelled it to do it.

Mr. Stahlman: Well, it was obliged to do it, or else get no business for its line. It had 171 miles of railroad running through Johnsonville and Hickman, and there was no way to get business for that road in competition with the boats unless they met

464 the boat rate; and in order to meet the boat rate, as I say, the reshipping arrangement was inaugurated, in which the lines south shared, and even the lines south of Chattanooga shared, so as to enable the line of the Nashville & Chattanooga west of Nashville to participate in handling this business.

Mr. McConnico: And, at the same time, to protect its through rate from these river points via Nashville?

Mr. Stahlman: To protect its through rate. There never was—Oh, of course, there may have been some rascality or manipulation, but I think they guarded against that—but there never was, to my knowledge, any attempt made to defraud the railroads or for the railroads to take advantage of that reshipping situation with a view of cutting the through rate, and it was not difficult to discover when such things were going on, because that stuff is all handled on a very small margin, and if any house or any railroad or any steamboat in connection with a railroad manipulated the rates on grain, even to the extent of a cent a hundred, it would be immediately felt. The purpose always was to maintain the rates, and not to disturb the rates.

Mr. McConnico: When the reshipping practice was begun at Nashville, after the N. C. & St. L. had extended its lines west

465 of Johnsonville on the Tennessee River and to Hickman on the Mississippi River, at that time were the L. & N. lines constructed from Nashville to Decatur?

Mr. Stahlman: The line from Nashville to Decatur is an old road, the old Nashville & Decatur Railroad. In 1871 the L. & N. leased that property, and it at the same time made a contract to complete what was known as the North Alabama Railroad, extending to De-

catur and Montgomery, Alabama; and those two roads became the property, so to speak, under a lease and through construction, of the L. & N.

Mr. McConnico: Then it was prior to the Louisville & Nashville's connection with the Southeast and South that the Nashville, Chattanooga & St. Louis Railway, for the reasons you have described, started this reshipping practice at Nashville?

Mr. Stahlman: Yes, sir.

Mr. McConnico: And has that reshipping practice been in vogue at Nashville ever since?

Mr. Stahlman: Yes, sir.

Mr. McConnico: On the map, which is your last exhibit, there is a red ink line drawn from Nashville to Evansville to represent the extension of the L. & N. Railroad from Nashville to Evansville. At what time was that extension constructed?

466 Mr. Stahlman: Well, that extension was finished, I think, about 1875, but it was not acquired by the L. & N. until 1879 or 1880. It was operated as the St. Louis & Southeastern Railroad and did participate some in the grain business, but it had no facilities for housing or handling. It could not do much grain business from river points in competition with the boats, and did not do much. It handled some grain from St. Louis and points beyond to points on its line. It had a line through from Nashville via Henderson to St. Louis, and had some very good grain country on the line between Evansville and St. Louis and handled some grain there, but it handled practically none from Henderson. That was acquired by the Louisville & Nashville in '79, I think.

Mr. McConnico: Was it at that time that the L. & N. began to extend its reshipping practice at Nashville?

Mr. Stahlman: Yes, sir.

Mr. McConnico: And has extended it from that time on until the present?

Mr. Stahlman: Yes, sir.

Mr. McConnico: Now, when the Nashville, Chattanooga & St. Louis Railway first began to extend these reshipping privileges at Nashville, at that time, Major Stahlman, was there any re-

467 shipping privilege extended by any of the carriers at Cincinnati, Louisville, Evansville, Henderson, Paducah, Cairo, or any of the other Mississippi or Ohio River crossings?

Mr. Stahlman: You mean when the N. C. & St. L. began?

Mr. McConnico: Yes.

Mr. Stahlman: No.

Mr. McConnico: The first reshipping of grain from the grain-producing country and the grain consuming country in the southeast—that first reshipping practice was started at Nashville by the Nashville, Chattanooga & St. Louis Railway in the way you have described?

Mr. Stahlman: Yes.

Mr. McConnico: And has been ever since?

Mr. Stahlman: Yes, sir. What I meant to convey was this: Nashville had the grain trade before the railroad was built west of

Nashville, and maintained its position as the grain-supplying center. The construction of this road simply changed the road from Nashville to Hickman, simply changed the method of bringing at least a large portion of the grain into Nashville instead of it all coming in by river. The N. & C. Company felt that it ought to at least feed its line west of Nashville, and with a view to that——

468 Commissioner Clements: Well, is it within your knowledge as to whether or not like practices existed at or prior to that time at other places on the Mississippi and Ohio Rivers?

Mr. Stahlman: Not that—yes, it is within my knowledge. This was along in 1869. They had no railroad to Evansville reaching to our section of the country.

Commissioner Clements: To Memphis?

Mr. Stahlman: They had a line to Memphis, yes.

Commissioner Clements: I do not mean with reference to any particular direction, but what was going on.

Mr. Stahlman: I don't know that. The chances are there was something of that sort going on.

Mr. McConnico: In asking that question, Major Stahlman, if at the time this reshipping practice on grain and produce was started at Nashville by the Nashville, Chattanooga & St. Louis Railway, at that time was there any reshipping practices extended at these other river crossings to any carriers that reached the Southeast?

Mr. Stahlman: No, not to my knowledge. There was no railroad there. The Cincinnati Southern was not finished; the Evansville & Henderson was not finished; the Illinois Central was not

469 finished to Cairo. All those roads have been built since.

Commissioner Clements: The whole situation has changed very much since then.

Mr. McConnico: Well, wasn't there some road from St. Louis? The Mobile & Ohio was there, wasn't it?

Mr. Stahlman: The Iron Mountain, running from a point opposite Columbus to St. Louis; the Mobile & Ohio from Columbus down to Union City. From Union City the business went over the Nashville & Chattanooga and came through Nashville. Now, that route did not undertake to handle any grain business from the river points. It handled business from St. Louis and west of St. Louis, coming through Columbus and Union City to Nashville, but it was really not a rival of the Nashville & Chattanooga Road or the steamboat on business coming up the river to Nashville.

Commissioner Clements: Well, you mean in taking grain to the Southeast——

Mr. Stahlman: I think the Mobile & Ohio always did command the grain trade in that section through which it ran, and the grain trade of Mobile. The other lines have never been built to do any business, much, at Mobile. I don't recall that they ever did

470 much; but it did not undertake to reach out beyond in the direction of what we call the Southeastern territory, even the Montgomery territory. I will explain that in this way: There is a large return business from the Southeast and from Montgomery

territory that goes to the western section of the country, and of course the Mobile & Ohio, and all railroads leading from the Ohio River points, and even those that did then—take the Iron Mountain, for example. They were anxious to get as much return business as possible. Consequently they cooperated to interchange business with the Nashville & Chattanooga Railroad, which was the line that could bring them the biggest bulk of return business. The greatest trouble of the railroads years and years ago was, you know, that nearly all of their cars went south full but less than 15 or 20 per cent returned with anything in them. The business of the South had not developed then; it had not grown like it is now. Vegetables and melons and peaches and things of that kind, that now come by the hundreds of carloads, in those days did not come at all; and iron and lumber and all of those things, that moved in large quantities after the '70's and up to the present time, were not moving at that time, and there was a scarcity of northbound business, and the roads which were running north and west were anxious to get it, and they worked with the roads and cooperated with
471 the roads that were able to give it to them; and the Chattanooga Road was able to give it to them, because they had connections, and favorable connections, that enabled them to gather it in and bring it back. Now, that is a part of history. For instance, Colonel ——, then President of the Chattanooga Road, was one of the lessees of the Western Atlantic Road. The alliance was very close. The President of the Georgia Railroad, Judge King, was a director of the Nashville & Chattanooga Railroad. So that the alliance was very close, growing out of the original plan to built that road from Chattanooga to give those people a western connection and enable them to handle the grain of the western country.

Mr. McConnico: Did anything that the carriers did at Nashville, in the way of extending reshipping privileges, induce any movement of the grain into Nashville; or was that movement already there by reason of the Cumberland River?

Mr. Stahlman: It was there by reason of the Cumberland River

Mr. McConnico: And that reshipping practice was inauguarted, as I understand, because the carriers had to adopt that means in order to protect their lines against the Cumberland River competition?

472 Mr. Stahlman: It would not have been possible for that road at all to have maintained itself in competition with the boats unless the lines south of Nashville had helped in some way to share the expense, or share in what we call prorating the amount that was necessary to enable the road to meet the boats' rates and compete with the boats.

Mr. McConnico: It has been suggested in this case that to meet that Cumberland River situation at Nashville the carriers would have to do either one of two things; that is, establish a very low rate, a local rate, into Nashville from these Mississippi or Ohio River points, or establish reshipping at Nashville to obtain their through rate to the Southeast. The carriers were constrained to adopt that latter course. I will ask you to explain why that was necessary.

Mr. Stahlman: Well, it was necessary because there is a large local business in Nashville. If the rates to Nashville had been legally reduced to the same basis on which the steamboats were bringing the business to Nashville, it would have resulted in an immense loss of revenue on Nashville business alone, independently of the business that the lines bring into Nashville now and reship. I do not know, but I should say probably 150 or 200,000 dollars a year on
473 Nashville business alone. And they could not afford it. Now, as a matter of fact, the railroads south, several of them, have been on the ragged edge many, many times. Take the Louisville & Nashville Railroad. I think I am correct in stating that the stockholders of that company have not received a return equal to one and a quarter per cent since the day that the road was finished up to the present time, and yet the road is not capitalized to-day at one dollar above the actual cost of construction. I do not mean to say that the Louisville & Nashville Railroad Company paid for these lines the amount that the present capitalization called for, because it bought some of them for very small sums of money; but I do say that the capitalization of the L. & N., including its bonded debt and its stock debt, its stock obligation, is not more than equal to the cost of building those roads, to which should be added, of course, the cost of equipment; and yet it has not paid one and one-quarter per cent from the day that the road was built, in '59, up to the present time, although now considered one of the biggest railroads in the country.

Commissioner Clements: Is that statement based upon accurate calculations of facts and figures within your own knowledge, or is it in the nature of an estimate.

474 Mr. Stahlman: I want to say it is based on this: I have not made a statement within the last ten years, but I had occasion—and that is why I speak as I do—I had occasion, prior to 1895, to discuss the question of capitalization and earnings before the Kentucky State Commission, and the investigation at that time showed it was less than one per cent. Now I do not believe the increased dividend since that time, the last 15 years, will more than increase the average to one and a quarter. These figures, however, are susceptible of being shown, I am sure.

Commissioner Clements: And yet the stock of that road was sent from 108 up to 150 when Gates bought a majority of it.

Mr. Stahlman: Yes; a man like him would run it up to most anywhere.

Commissioner Clements: Why should it bring such prices as that if it is not good for more than 1¼?

Mr. Stahlman: It is now, Judge.

Commissioner Clements: Do you recall, or are you informed, as to the issue of the stock dividend on that road along about 1880?

Mr. Stahlman: Yes, sir.

475 Commissioner Clements: What per cent was it?

Mr. Stahlman: I do not recollect what it was, but my position is this, that the capital stock and bonded debts will not exceed the actual cost of the construction of those roads.

Mr. Wimbish: I have no disposition to enter any objection what-

ever to anything that will tend to bring out the facts in this case, but I think I should object to the character of the testimony just give by Major Stahlman. Your Honor's questions have developed very cleary that his statements were general and misleading, and it has absolutely no bearing on the case and provokes a discussion and possibly cross examination on my part; and I suggest that all those matters of capitalization and dividends of railroads have nothing whatever to do with the matter.

Commissioner Clements: I guess it has a very remote bearing, if any. It has gotten into the case accidentally, I guess, and we do not desire to pursue that matter any further.

Mr. Stahlman: I wanted to say it was necessary to dig up every dollar here and there.

Mr. Wimbish: My objection is that the Major argues the case instead of testifying to facts.

Mr. Stahlman: I think what I stated with reference to the
476 valuation and dividends of the road will be borne out by the facts, and I will furnish the Commission with the facts if necessary. I would rather do that now, inasmuch as it has been called in question. I do not want the Commission to call me down. I am liable to say things off the line. I do not want to do that.

Commissioner Clements: As a general rule it is necessary to keep in close touch with all the matters that are involved, and in this case it is a question of discrimination. These other matters are very instructive and interesting, but possibly not of much use in a question like this.

Mr. Andrews: That was not so very remote, Mr. Clements, I think. The Major was asked whether the railroads could afford to charge that, and the Major says they could not afford to do it because they had not been making any money.

Commissioner Clements: Right on that point. I cannot see exactly why it was necessary to meet the river competition to get the business that had to go beyond, in which the rate had to be divided, and yet it was not worth while to bid against the river in order to get the traffic in to Nashville that was going to stop there. You say they
could not afford to meet the river rates on the local grain in
477 to Nashville. Why wasn't it just as much to their interests to get that from beyond the river as it was to get that which was going through Nashville?

Mr. Stahlman: I said this, that business that moves in to Nashville on local rates for local purposes pays now, we will say, 10 cents from the Ohio River, but it is an erroneous idea to assume that the Ohio River originates much business that comes to Nashville for local consumption. It is a different character of business that Nashville handles, although of the same grade and often of the same class in the classification. Now I do not think that the railroads could afford to make a rate on grain from the Ohio River to Nashville at 7 cents and maintain a rate of 10 and 12 cents on other products that were of the same value, and that would class in the same way. The classification and the article in the classification are presumed to have been worked out on the basis of value or risk of transportation and other things incident to their value, and the

risk and cost of transportation. It would be eminently wrong for the railroads to just pick a particular thing out that had been in a classification and add a certain rate and make a rate on that from one point that would not be equal with the rates on like character
478 of traffic classified on the same basis and in the same way, and which would not be equal with like rates on the same traffic from other points.

Mr. McConnico: Major Stahlman, what do you say to the proposition of regarding the Cumberland River merely as a competitor of the rail lines in to Nashville, and not regarding it as a competitor of the rail lines on the haul from the Ohio River via Nashville in to the southeast? Does not the river affect that through haul or the competition with respect to that through haul just as much as it does, or in a degree at least, the same as it affects the haul up to Nashville?

Mr. Stahlman: It does. The rates from the Ohio River could not be maintained.

Mr. McConnico: As I understand, Major, the proportion of the Nashville, Chattanooga and St. Louis Railway out of the through rate from Nashville to Atlanta, of 24 cents on grain, moving from or through these river gateways to Atlanta, is 14.2 cents.

Commissioner Clements: Whose proportion is that?

Mr. McConnico: That is the Nashville, Chattanooga and St. Louis proportion.

Mr. Stahlman: From Nashville to Atlanta.

Mr. Andrews: To Atlanta only.

Mr. McConnico: To Atlanta only. Now, state whether or
479 not any rate out of Nashville, any local rate from Nashville to Atlanta of 14.2 cents could be maintained by the railroad?

Mr. Stahlman: You mean whether or not any rate of 14.2 cents could be maintained from Nashville to Atlanta on this through business? You could maintain the rate of 14.2 from Nashville to Atlanta, but you could not maintain the rate of 24 cents from the River points to Atlanta. The boat rate would cut that.

Mr. McConnico: That is what I had reference to.

Mr. Wimbish: How would it cut the rate from Cincinnati to Atlanta? How would the Cumberland competition cut the normal rate from Cincinnati to Atlanta?

Mr. Stahlman: I was talking with reference to grain.

Mr. Wimbish: I am speaking of grain also.

Mr. Stahlman: Well, the grain did not come from Cincinnati. We do not handle any grain from Cincinnati through. If the steamboats from the Ohio River, where the grain is produced, would bring that grain as they have done, and as they are willing to do and would be glad to do now, and are doing now, at 6 cents a hundred, that would make a rate of 20.2 cents from all Ohio River points to Atlanta, via the steamboats of the Cumberland River and the
480 Nashville & Chattanooga Road, and that would cut the rate 3.8 from every one of those points. If you cut them from the points that those boats reach, it would affect all the other points that the boats do not reach, because they are on the same basis.

Mr. Wimbish: How would it affect the rate from Memphis to Atlanta?

Mr. Stahlman: If you cut the rate from Cairo—now, the presumption is, and I think it is a fair presumption, that the present adjustment of rates from Ohio River points and gateways over which the railroad fought for years, and my recollection is that the late Judge Cooley finally decided for them as to what the rate should be—that the present basis or adjustment of rates from Ohio River points, including Memphis and Hickman and Evansville and Paducah and Owensboro and Henderson and Cincinnati—now, if you cut the rate from Cairo by this process, or allow it to be cut from Cairo by this process, or Hickman or Evansville or Paducah or Henderson, that are called the grain growing sections, you are obliged to destroy all opportunity of Memphis doing any business at all, because Memphis draws largely from the same section that Nashville does. In other words, you place Memphis 3.8 cents above her legitimate basis that has been established, and, as I say, fought over and
481 fought out and finally decided to be an equitable adjustment.

I want to say this, that this river is there, and it was doing an enormous business as far back as the Seventies, and we had active competition all the time. It is this reshipping arrangement that has enabled these lines to share in it for their own benefit. That is, the rail lines, and that is the only thing that prevents the boats from controlling the whole situation, because the river now is in a better condition than it was in 1870 or in 1865. The United States Government has been working on that river and pulling out all the snags and removing shoals and building dams and going on with that work, and ten years hence it will be navigable the year around. Cumberland River is a very small river in width, but it is a great big river in other respects. The Cumberland River, or rather Fort Donaldson, fell at the hands of the troops that went up the Cumberland River; Nashville was taken possession of by the Army that went up the Cumberland River. There was not a single soldier that came in to Nashville on foot or horseback; they all came by the Cumberland River; and it is a great big river all the time. It was a big river before there was a railroad built, and it is getting bigger all the time.

Mr. McConnico: Is the Government of the United States
482 expending large sums of money in that general direction?

Mr. Stahlman: Yes sir; millions of dollars.

Mr. McConnico: Now you have described the conditions existing at Nashville that constrained the inauguration, and has constrained the maintenance of these reshipping practices at Nashville. I want to ask you to state whether or not those conditions that constrained the carriers to extend those privileges at Nashville are operative upon the grain business at Atlanta, Columbus, or Macon or Cordele or Albany or Valdosta or Dublin or Montezuma or Rome.

Mr. Stahlman: Well, now, I am not really familiar with what the rate situation is now. I think you can probably bring that out more certainly by some other witness. You say whether they are operative?

Mr. McConnico: Do you know of any conditions that are operative at these larger points that I have named that are similar to the conditions that constrained the carriers at Nashville to extend this reshipping practice.

Mr. Stahlman: Oh, mercy! No; not at all. You see, Nashville had this business before there was a railroad built into Nashville except the Nashville and Chattanooga Road; but what these people are doing in the making of these reshipping arrangements is
483 simply to enable Nashville to hold the business that she had before and have that business come in and out over the lines that they have built north and west of Nashville. That is all. Nashville has not been given anything more than she had before. She has not got as much as she had before, before there was a single railroad built north and west of Nashville. She has not got as much. She is just now one of the several gateways.

Commissioner Clements: Mr. Stahlman, isn't it generally true north of the Ohio River that where a road provides in its tariff for these shipping privileges in transit, miling in transit, shipping in transit, and so forth, these transit privileges generally, such as we have been talking about, that it extends them to all points on its line through Ohio and Indiana?

Mr. Stahlman: It does to points where there are elevators and mills. I think they do; but there are certain points on the lines of these roads where they establish elevators—a good many points on the different lines. Where mills are established, they run the grain into the elevators and into the mills, and make these reshipping arrangements.

Commissioner Clements: And apply the through rates?

Mr. Stahlman: Yes sir.

484 Mr. McConnico: Do you not understand, Mr. Stahlman, that the carriers north of these rivers limit the extension of these transit privileges to such towns as are concentration points for any given commodity?

Mr. Stahlman: Well, I think that is true.

Mr. McConnico: I am not, of course, referring to milling in transit, but to these reshipping privileges as such. Was Nashville at any time an important market for the handling of cotton, Major Stahlman?

Mr. Stahlman: It was. It was just after the war, and for several years succeeding the war. In fact, before the war they handled from a hundred to 1250 bales a year; sometimes less, sometimes more. It was considered a very good sized interior cotton market.

Mr. McConnico: Has that business now gone from Nashville?

Mr. Stahlman: Yes sir.

Mr. McConnico: Very largely?

Mr. Stahlman: I doubt very much if we handle 20,000 bales a year.

Mr. McConnico: Now, why has that business gone from Nashville?

Mr. Stahlman: Well, conditions have very greatly changed—the

way in which cotton is handled. Of course there is some
485 territory adjacent to Nashville that is not growing as much cotton as it formerly did, but Nashville, during the period that I mention, when she had large receipts of cotton, drew cotton from North Alabama and West Tennessee; and conditions have changed now. They used to bring it up there and consign it to the factors to sell. The buyer goes for it. The representative of the foreign house or the New England cotton mill or spinner, goes to the towns, the different towns where the cotton is grown, and buys the cotton and ships it direct, so that in that way we have lost our cotton business.

Commissioner Clements: Well, I suppose in that period of time of course changes are growing in every direction. One business goes out, and another one and so forth.

Mr. McConnico: Now, just in line with that, Major Stahlman, I want to ask you if you can suggest any conditions applicable to Atlanta and the dealers in grain there that have changed?

Mr. Stahlman: Very material changes. I can recall when the bulk of the whole western produce, the entire western produce that went in to the southwest and even into Montgomery, went to two or three points. For instance, that Georgia territory—Augusta, Macon and Atlanta—largely to Atlanta, in what we know
486 as Montgomery territory, was Selma, Montgomery and Opelika—largely Montgomery and Selma. Well, that was due to this fact, that the people of the South had not sufficiently recovered from the Civil War, and there were only a few who had capital to handle grain and take the risk incident to the shipment of grain, and those men were located in the largest cities, Atlanta, Montgomery, Selma and so forth. Now, conditions have changed in this way; in that day and time when Atlanta did business for a large part of that territory, and Montgomery for its territory, the grain merchant attached his bill of lading to a sight draft; the western grain merchant, whether he was a Nashville man or at some other point, needed his money, and that draft was payable on the receipt of the draft through the bank. Now, the little fellow in a small town could not always afford to put up enough money to pay for a carload of corn or of flour or western produce of any kind. Because in that day and time the railroad had very poor shipments, and I have known freight to be on the way between Nashville or St. Louis and Montgomery six or seven weeks in a blockade. Now that prevented the man in the smaller town from doing business direct in the earlier times. No doubt he would have liked to have gotten rid of the middle man in Atlanta who was making the profit for him, but he was not able to stand up under it and he
487 had to do what business he could. Now those conditions have changed. The railroads are making better time and the grain men are in a better condition and they know the people of the South better and they now sell them with bill of lading attached to drafts payable upon the arrival of the stuff. Now the man at the little town below Atlanta can order his stuff and get it at the same price as the man at Atlanta can buy it and he is able to pay, because

he doesn't have to pay for his stuff until it goes there, and the business which formerly went to Atlanta under the conditions that existed twenty or thirty or forty years ago has gone away from Atlanta and gone to the smaller towns and the smaller towns have been able and are able to get the shipper and avoid the profits of the middle man.

Mr. McConnico: And that busines has to some extent left Atlanta, owing to the conditions you have described, while the Nashville markets have but continued to have those same reshipping privileges?

Mr. Stahlman: Yes sir.

Commissioner Clements: Oh, of course, you can go back far enough to get to the time when goods were hauled from Baltimore down in to Tennessee in wagons, and when Atlanta was Marthasville or Marysville, and Augusta and Savannah were the only
488 places in Georgia that did any distributing business. The methods have changed, the railroads have reached all these numerous little places, and through lines exist and mills move in and all these commercial needs have been met, and there is no doubt that the whole thing has changed.

Mr. Stahlman: Yes, it has changed very much.

Commissioner Clements: Commercially and physically and every way. There is no doubt about that.

Mr. McConnico: I will ask you if a factor in the situation you have been describing and the changes that have come about which have permitted the man in the smaller town, or around Atlanta, to not go to Atlanta but to buy direct, has been influenced to some extent by the fact that those towns, in numerous instances, have been made basing points to which through rates are made and they no longer based on Atlanta.

Mr. Stahlman: That is true. May I just make this suggestion with reference to the reshipping arrangements. It may be said that there shipping arrangement entails some additional work on the railroad in the handling and switching of cars. Away back yonder when this arrangement was started and the delays were just simply enormous and troublesome, and bringing it up to the
489 present time, I mean up to a certain time, the railroads were taxed to the utmost capacity to handle the business, and they could not do it. There was an enormous tax put upon them by claimants because of delays or the condition in which grain and other products would reach destination. Moisture, sprouting and must and all that sort of thing. Grain from St. Louis or beyond St. Louis would be five or six weeks getting through there. It was simply dreadful, the claims made both by the shipper and by the consignee. Well, now, under this reshipping arrangement if a carload of grain starts from any point, Ohio River point or any other point, the railroad now, when it comes to Nashville, although it takes a little time to switch it into the elevator, if there is anything like must or sprout or anything of that kind, that is going to be removed; that trouble is going to be obviated, and all of that danger of large claims that grew to be burdensome have been gotten

rid of through the reshipping arrangement at Nashville, by reason of the facilities for handling and heating and drying grain when it comes in to Nashville that now exist. The railroads feel sure, if a shipment is billed from Nashville, that the stuff is in good shape and will reach its destination in good shape and there will be no trouble about it; and hence there are men willing to incur
490 any additional expense in handling and care to the elevator and back again. After all, it is but little additional expense, because the contents were all made up at Nashville anyway and switched from one train to the other. And that is not only the reason why the railroads do that, but it was one of the incentives for doing what they could to master these various troubles and it was not done for the interest of Nashville particularly, but to promote their own interests and their own protection.

Mr. McConnico: In other words, Nashville is a point in the haul of the grain from the grain producing territory to the grain consuming territory where it is to the interests of the carrier and the producer and the shipper and the consignee to have stoppage in transit facilities extended in order that the grain may be properly rehandled and conditioned for its own protection?

Mr. Stahlman: That is true. It is the safest and best method of handling.

Commissioner Clements: Now, let us get your views on this point: Taking it on grain moving from the Northwest, this producing territory, to any one of these places in the southeast; take Val-
491 dosta, Cordele, for instance. I do not know what the rate is from the Ohio River to either one of them. Take Atlanta. We do know what that is. 24 cents, I believe.

Mr. Stahlman: Yes sir; that is right.

Commissioner Clements: Now, it is going to move from the Ohio River or some point where the 24-cent rate prevails, to Atlanta. What is it from Memphis? Is it the same?

Mr. McConnico: Twenty.

Commissioner Clements: Take it either way. Take it from the Ohio River to make it simple. It moves through Nashville and through Chattanooga and on to Atlanta. Now what difference does it make to the railroad whether it shrinks out of it enough to permit stopping in transit and the reshipment in transit at the through rate, whether that is done at Nashville or done at Chattanooga or done at Dalton or at Rome or at any other place? It is going to move from a certain territory to a certain territory over a certain line, and if it goes through Nashville you are going to shrink it in order to make the through rate apply on the two movements. Now, if there are equal facilities for handling it, elevators and the other things incident to the handling of it, at any of these other places, it does not matter whether it is a big one or a little one, what
492 difference does that make? Suppose it was Murfreesboro or any other station between the point of origin and the point of destination; what difference does it make to the carriers who are only going to get so much out of it anyhow, whether that shrinkage comes out of it at Nashville?

Mr. Stahlman: It does not make any difference at all; and the railroads would not indulge in the shrinkage at Nashville if they were not obliged to do it. My position is—and these railroad men do not agree with me—that the local rate from Nashville to Atlanta is higher relatively than it ought to be; that it ought not to be 17 cents. The Nashville people consented to have it stand at 17 cents, and have submitted to the 17-cent rate because of the reshipping arrangement. There is no other reason why a shipment handled by a Nashville man, that comes from an Ohio River point, should pay a greater rate primarily than if that shipment was handled by some man that lived away from an Ohio River point. Now, our contention is that—I am talking now from a Nashville standpoint, not from a railroad standpoint, because they would not admit that they had ever made a rate that was not fair—our contention is that if we had the right sort of rates we would have a rate of about 14.5
493 cents to Atlanta, and then if we had that, we would not want any reshipping arrangement, but we would tear up your rates from the Ohio River to smithereens. You could not do that at Cordele or Atlanta. The Lord made that river. Nashville is on the River. The Lord did not make any river like that at Atlanta or Cordele. We ought not to undertake to do by artificial means what God has given certain people. In other words, we ought not to take away from certain people by artificial means what the Lord in his wisdom has given them and what they have made available for their benefit.

Commissioner Clements: If there was a rate of 14.5 cents, which you think would be right, from Nashville to Atlanta, open to anybody alike who wanted to use it, these people probably would not be here from these other points.

Mr. Stahlman: Let me just suggest a point. Now, suppose the rate was made 14 cents. That also is the basis of the rate formerly on business from that Ohio River territory. Now you make it 14 cents from Nashville—what we say it ought to be. You add your 6 cents up river; that makes 20 cents. The river point is not going to stand that. They are not going to pay 24 cents. You have cut that rate from all Ohio River points just 4 cents. The very minute you do that you take away from Nashville the advantage
494 that she had, unless you can cut the rate from Nashville; and every time you do that you cut it from the Ohio River.

Mr. Wimbish: In other words, you want to make Nashville a combination point.

Mr. McConnico: He did not say that at all.

Mr. Wimbish: He did not say it, but that is what he means.

Mr. Stahlman: We want to make Nashville the point locally—remove that local rate that we have got in there of 7 cents and make it what you say Atlanta ought to be. If you get for Atlanta what you are contending for, beyond the peradventure of a doubt they will be in a worse fix. But woe be unto all the Ohio River points that are competing with us. We can take care of ourselves.

Commissioner Clements: I did not perhaps understand you when

you said the rate ought not be 17 cents but ought to be about 14.5 cents. If it was, you would not want this transit privilege there?

Mr. Stahlman: As long as the rate is maintained from the Ohio River.

Commissioner Clements: But I say, if that be so, these people from Atlanta would not be here, if the 14-cent rate was open to them and everybody alike.

495 Mr. Stahlman: There is not one of them who will agree with you.

Commissioner Clements: Now, you say that would make things worse than they are now?

Mr. Stahlman: Make it better for Nashville, but woe be unto the Ohio River Crossings and Atlanta. Atlanta would not be in it at all; that is, the Atlanta merchant would not be in it at all.

Mr. Wimbish: He is willing to take his chances.

Commissioner Clements: My question was not directed with reference to the interests of the Atlanta merchant or anybody else; it went to this question: If the carriers of grain from the west to the southeast are going to shrink out 3 cents to get it there on a through rate, which is that much less than the sum of the locals, what difference does it make whether they shrink it out at Nashville or Murfreesboro or Chattanooga or Dalton or Rome or Atlanta, if it is going beyond Atlanta?

Mr. Stahlman: Well, I think there is—you call it shrunk—I think there is enough shrinking right now where the railroads are obliged to so shrink their rates in order to meet competition on the Cumberland River. If it is a sacrifice to the railroads and to

496 the community, why undertake to carry that down into Georgia where there is no river?

Mr. McConnico: Major Stahlman, I will ask you whether or not from the standpoint of the protection of the grain in transit, from the standpoint of the economic distribution of the railroad companies' rolling stock and things like that, is Nashville the logical and economic place at which to extend this stoppage in transit privilege on grain for it to be rehandled there, over these other points in the southeast?

Mr. Wimbish: That is all argumentative. Your question does not call for a substantial fact.

Mr. McConnico: We are entitled to some extent to the witness' information.

Mr. Stahlman: If you will examine the map of Nashville and the system of railroads leading westward and southward, both, from the south in Montgomery territory, you will see that Nashville is really the very center of that system; that is, that they have just about as many miles of road south of Nashville as they have north of Nashville, and vice versa. It is the very bottom, the body, the center, where their systems meet and from which point they spread out. Now, that is the situation at Nashville from a railroad point of view.

497 Mr. McConnico: You have mentioned something of the grain getting out of condition and spoiling in transit. I will ask you if that frequently happens in the movement of

grain from higher altitudes and colder climates than to lower altitudes and warmer climates and more humid atmosphere?

Mr. Stahlman: Yes sir.

Mr. McConnico: That is, in moving, generally, from the north to the south?

Mr. Stahlman: That is true.

Mr. McConnico: I will ask you to state whether or not it is in the interests of the protection of the grain to have the stoppage in transit privileges extended at Nashville, which is 289 miles farther north than Atlanta, say, for the purpose of protecting the grain. I mean by that, just to illustrate—will it ever be true that grain moving from the grain producing territory in the northwest through these Ohio and Mississippi River gateways, by the time it gets to the Ohio River it could not be discovered, perhaps, whether that grain was spoiling or not, and yet by the time it got to Nashville it could be plainly seen that the grain would have to be rehandled if it was saved; and might it be true that that same grain, if hauled on as far as Atlanta, would spoil before it got to Atlanta?

498 Mr. Stahlman: Yes sir; I stated awhile ago that that is one of the troubles that the railroads encounter, and they feel that the changes from the cars to the elevators and the drying process that necessarily follows that change in the handling of the grain was extremely helpful and prevented the grain from spoiling, and benefited the railroads in avoiding the multitudes of claims presented from time to time and which became a great burden.

Mr. McConnico: And, as I understand, by reason of Nashville's location, where it is midway the haul, and by reason of the condition with respect to the colder and warmer climate at Nashville is regarded under all the circumstances as a proper place and an economic place at which to extend these facilities.

Mr. Stahlman: There is no doubt of that.

Mr. McConnico: I will ask you if consequently larger facilities for handling grain and for conditioning it in transit have come into existence in Nashville than even at any of the Ohio River crossings.

Mr. Stahlman: Yes sir.

(No cross-examination.)

Commissioner Clements: Whom will you call next, gentlemen?

Mr. McConnico: I will call Mr. McClellan.

499 R. H. McClellan, called as a witness, having been first duly sworn, testified as follows:

Mr. McConnico: Please give your name to the stenographer.

Mr. McClellan: My name is R. H. McClellan.

Mr. McConnico: Mr. McClellan, where do you reside?

Mr. McClellan: At Nashville.

Mr. McConnico: What business are you in?

Mr. McClellan: Grain business.

Mr. McConnico: With what company are you connected?

Mr. McClellan: J. H. Wilks & Co.

Mr. McConnico: How long has that company been in business in Nashville—in the grain business?

Mr. McClellan: Since 1876.

Mr. McConnico: How long have you been connected with that company?

Mr. McClellan: Since 1906.

Mr. McConnico: What was your occupation before you went with that Company?

Mr. McClellan: I was connected with the Georgia Railroad in several capacities since 1892.

Mr. McConnico: How long have you been familiar with the traffic situation and conditions with respect to the handling of
500 grain at Nashville and other points?

Mr. McClellan: Well, intimately only since 1906.

Mr. McConnico: I will ask you to state how much capital your concern has invested in improvements in the way of handling facilities, or elevators and so forth?

Mr. McClellan: About $31,000.

Mr. McConnico: What are your facilities; of what do they consist?

Mr. McClellan: Real estate and warehouses and elevators.

Mr. McConnico: What is the capacity of your elevators and warehouses?

Mr. McClellan: About 50,000 bushels.

Mr. McConnico: Are your handling facilities located on the rail lines alone, or on the river and rail, or on the river?

Mr. McClellan: Rail alone—N. C. & St. L. and L. & N.

Mr. McConnico: I will ask you to state, Mr. McClellan, to what extent the handling facilities at Nashville in the way of elevators and warehouses have located themselves exclusively on the rail lines upon the faith of these reshipping privileges that the rail lines have extended to Nashville?

Mr. McClellan: Almost entirely.

501 Mr. McConnico: Can you state what handling facilities, if any, are located on river and rail?

Mr. McClellan: Only one.

Mr. McConnico: That is the River & Rail Elevator, a photograph of which has been heretofore exhibited with Major Stahlman's testimony?

Mr. McClellan: Yes sir.

Mr. McConnico: Can you state approximately how many dealers have their handling facilities located exclusively on the rail lines at Nashville that are not in touch with the river?

Mr. McClellan: There are about 25.

Mr. McConnico: Active ones?

Mr. McClellan: Active ones.

Commissioner Clements: When you say dealers, do you mean elevator men, or what is meant by dealers?

Mr. McClellan: The firms that do a shipping business.

Mr. McConnico: There are 25 of them that ship?

Mr. McClellan: Yes sir; about that.

Mr. McConnico: How many of those have warehouses and elevators?

Mr. McClellan: About fifteen, I believe.

Mr. McConnico: Are there others, beyond these twenty-
502 five, that are in the grain business, but do not ship?

Mr. McClellan: Oh, yes.

Mr. McConnico: How many members are there to the National Grain Exchange?

Mr. McClellan: Sixty.

Mr. McConnico: That embraces local dealers and dealers who ship, and also embraces people in the grain business that are not dealers in the sense that they ship?

Mr. McClellan: Yes.

Mr. McConnico: Mr. McClellan, what effect would it have upon your fixed investment and your handling facilities located exclusively on the rail lines if the Commission should enjoin the reshipping privilege at Nashville or enjoin the discrimination as between Nashville and the southeastern points named, and the carrier should undertake to comply with that order by stopping reshipment at Nashville and by charging a local in and a local out—what effect would that have upon your fixed investment on the rail lines?

Mr. McClellan: It would practically confiscate it.

Mr. McConnico: How do you value your improvements now; how much of it is ground and how much of it is improvements in the way of buildings and warehouses, on the rail lines?

503 Mr. McClellan: The real estate is worth, I suppose, about $10,000, and my warehouse cost me $21,000.

Mr. McConnico: Now, what would your improvement be worth if this reshipping practice was withdrawn at Nashville and you had to pay the local in and the local out?

Mr. McClellan: That would be largely speculative, of course. The real estate would be the only asset I could figure on. The other would have to be sold for salaries or other purposes.

Mr. McConnico: Now, are there other dealers in grain in Nashville that handle their business through the public elevators?

Mr. McClellan: Yes.

Mr. McConnico: What effect, Mr. McClellan, would it have upon your business or the business of your company if these transit privileges were destroyed at Nashville or were withdrawn at Nashville and the rail carrying lines were to charge the full local in and the full local out?

Mr. McClellan: I would have to go out of business or get more money and go up the river and build an elevator.

Mr. McConnico: And would that require time and large investments?

Mr. McClellan: It certainly would.

504 Mr. McConnico: You would either have to quit business or you would have to reorganize on the basis of the river?

Mr. McClellan: I would be out of business temporarily, anyhow, several months.

Mr. McConnico: That is, you would have to quit business in Nashville or go up the river?

Mr. McClellan: Yes.

Mr. McConnico: And you would be out of business, you say, temporarily several months?

Mr. McClellan: Until I could put a plant on the river.

Mr. McConnico: And what would become of your established business in the meantime?

Mr. McClellan: I have a hard time holding it by working all the time. I reckon it would be gone when I got through with it.

Mr. McConnico: If you had to suspend for several months, you would not have much left at the close of that suspension?

Mr. McClellan: No sir.

Mr. McConnico: I will ask you to state whether or not if these reshipping privileges at Nashville had not been extended by the carriers for so many years and if the handling facilities at
505 Nashville had not, upon the faith of these privileges, located themselves very largely and exclusively upon the rail lines, if Cumberland River could have done the business of bringing the grain in to Nashville?

Mr. McClellan: Oh, undoubtedly.

Mr. McConnico: I will ask you to state, if you can, at what rate the grain coming in to Nashville from the Ohio River gateways, if it all moved in by the Cumberland River with just ordinary packet boats and ordinary barges, could be handled by the Cumberland River in to Nashville for?

Mr. McClellan: About 6 cents, I think.

Mr. McConnico: With modern equipment, we will say, with steel barges and proper appliances to eliminate labor on the boat lines—I will ask you to state what, in your judgment, that grain could be brought by tugs and barges from those Ohio and Mississippi River crossings in to Nashville, on the Cumberland River?

Mr. McClellan: It would undoubtedly be greatly reduced.

Mr. McConnico: Even below the 6 cents?

Mr. McClellan: Oh, yes; but that is of course purely speculative as to how much. I should think it ought to be done for 3 or 4 cents a hundred.

Mr. McConnico: If the grain business at Nashville had to be shifted from the rail basis to this river basis, would the effect on
506 everybody else's improvements there, all of the other dealers' warehouses and elevators that are situated exclusively upon the rail lines, be substantially the same as you have described them with respect to your own?

Mr. McClellan: They would, exactly.

Mr. McConnico: If the facilities were in Cumberland River and were provided to handle all of the grain business via the river by boats and barges in the way you have described, and if handling facilities sufficient to handle the business were installed on the river and the rail lines, state whether or not all of the grain that Nashville rehandles to the southeastern territory could come into Nashville by boat and could pay the full local rate of 17 cents, we will

say, to illustrate, from Nashville to Atlanta, and get a through rate from these river crossing towns, to Atlanta via Nashville, as small or smaller than the present through rate of 20 cents?

Mr. McClellan: It could.

Mr. McConnico: Mr. McClellan, what effect does a long continuous haul of grain in bulk or confined in cars from higher and colder climate into a lower and warmer territory have on the grain?

Mr. McClellan: Well, if it has sufficient moisture, it will heat, germinate, particularly in the germinating season.

507 Mr. McConnico: I will ask you to state what are the states in which your concern largely buys its grain; that is, rehandled to the southeast?

Mr. McClellan: Indiana, Illinois, Missouri, Kansas, Nebraska, Iowa.

Mr. McConnico: At what points do you sell that grain?

Mr. McClellan: The Carolinas and southeastern territory.

Mr. McConnico: I will ask you to state what advantage there is in rehandling that grain for the purpose of conditioning it at Nashville, over such a rehandling at any of the Ohio River gateways?

Mr. McClellan: Well, it goes about anywhere from 2 to 5 days. It takes a longer time for the corn to show what it is going to do, and it also gives us the advantage of the difference in the temperature.

Mr. McConnico: State whether or not, from your knowledge of grain, it is true that in many instances it could not be discovered in the movement of the grain from the cities you have mentioned towards the southeast—that it could not be discovered that the grain needed any conditioning at these Ohio River gateways and yet by the time that grain reached Nashville it could be plainly seen that it needed conditioning. Is that so?

508 Mr. McClellan: It is. I have frequently bought grain and and it was out of condition, or getting out of condition, when it got to Nashville.

Mr. McConnico: It came from the Ohio River gateway, but at Nashville it was discovered, and plainly discovered, that that corn had to be handled at once or it would be damaged?

Mr. McClellan: That is right.

Mr. McConnico: Now, would that same corn, if it had gone on to Atlanta without being rehandled at Nashville, have spoiled before it could have reached Atlanta?

Mr. McClellan: It very likely would.

Mr. McConnico: I will ask you to state whether or not you know that in the past and in the comparatively recent past that large shipments of grain that have moved through Nashville into the southeastern territory have had to be returned to Nashville to be properly rehandled and kiln dried or conditioned to try to save the grain?

Mr. McClellan: Yes; I have returned some myself.

Mr. McConnico: Are there any facilities at Atlanta or these other Georgia points named, or anywhere else southeast of Nashville, for kiln drying the grain?

Mr. McClellan: I do not think so; I do not know.

Mr. McConnico: I will ask you if, prior to three years ago,
509 there were any such drying facilities even at any of the Ohio River gateways?

Mr. McClellan: There was one at Henderson four years ago.

Mr. McConnico: Well, prior to four years ago, then, were there any such drying facilities at any of the Ohio River gateways?

Mr. McClellan: Not to my knowledge.

Mr. McConnico: I will ask you if the fact that Nashville is favorably located with respect to climatic conditions and its relation with respect to the entire hauling of the grain has induced or caused any large handling facilities or conditioning facilities to locate themselves at Nashville. If so, describe the drying facilities that are at Nashville for handling the grain there to protect the grain from its haul from producing into consuming territory?

Mr. McClellan: There are three driers there now.

Mr. McConnico: And please give their capacities.

Mr. McClellan: Their combined capacity is about 35,140,000 bushels a day, I will say.

Mr. McConnico: How long have those drying facilities been in Nashville?

Mr. McClellan: About—I do not know. They have been
510 there ever since I have been in the grain business.

Mr. McConnico: Then you cannot speak with respect to how long they have been there?

Mr. Clellan: No; I know they have been there quite a number of years.

Mr. McConnico: I will ask you, Mr. McClellan, if you know that numerous grain dealers in the grain producing sections of the country to the west of the Mississippi River and in the northwest refuse and decline to sell grain for delivery south of Nashville into southeastern territory?

Mr. McClellan: During the germinating season they won't.

Mr. McConnico: When is the germinating season?

Mr. McClellan: In the spring of the year, usually, when everything else is beginning to take on life.

Mr. McConnico: When the dogwood blossoms bloom?

Mr. McClellan: When the dogwood blossoms bloom; yes.

Mr. McConnico: I will ask you to describe what has to be done with grain, Mr. McClellan, to interrupt this progress of destruction while it is in transit?

Mr. McClellan: The first move is to give it air; unload it and fan it. If it is not very far gone, it will return to its normal con-
511 dition. The next move is to send it to the drier.

Mr. McConnico: Dried by kiln?

Mr. McClellan: By artificial heat. It is never resorted to unless it is necessary to save the corn.

Mr. McConnico: Now, why is it, Mr. Clellan, that these numerous dealers you have mentioned will refuse and decline to ship grain south of Nashville for delivery from them in the northwest and west to a point south of Nashville?

Mr. McClellan: Well, because Nashville is the farthest point south where they are sure of protection if the corn gets out of condition.

Mr. McConnico: Its danger line, in other words?

Mr. McClellan: Yes. If it gets out of condition, it will have to be returned to Atlanta.

Mr. McConnico: In other words, in all probability by the time it gets to Nashville it can be discovered whether it needs conditioning, and the facilities are there.

Mr. McClellan: Yes; it can usually be discovered there.

Mr. McConnico: Well, if it went farther south it might spoil before it could be conditioned? Sir?

Mr. McClellan: Yes sir.

Mr. McConnico: In case of the damaging of the grain or its spoiling in transit without the fault of anybody, whose loss is it?

512 Is it the shipper's loss?

Mr. McClellan: It is the shipper's loss. I have found it so.

Mr. McConnico: I think that is all.

Cross-examination:

Mr. Wimbish: How long would it take to transport a car of grain, say from St. Louis by boat to Nashville?

Mr. McClellan: I never brought any that way. I cannot say.

Mr. Wimbish: Have you any idea?

Mr. McClellan: No, I have not.

Mr. Wimbish: How much longer do you think it would take to transport a carload of grain by rail from St. Louis to Atlanta?

Mr. McClellan: From St. Louis to Atlanta than from St. Louis to Nashville by boat.

Mr. Wimbish: It would take very much longer than by rail?

Mr. McClellan: It ought to take a great deal longer.

Mr. Wimbish: It ought to?

Mr. McClellan: Yes, but I have known it to take—that depends on how quick it was handled by the railroads.

Mr. Wimbish: We know that rail transportation is much more rapid than water transportation.

Mr. McClellan: Oh, yes.

Mr. Wimbish: Now, you say that grain brought from a higher altitude into a lower altitude settles, and settles largely be-

513 cause of the greater humidity?

Mr. McClellan: The temperature; from a low temperature to a higher temperature.

Mr. Wimbish: Does not humidity have a great deal to do with it—heat and humidity? If it was a dry temperature it would not hurt grain, would it?

Mr. McClellan: Usually when we have hot corn troubles we have a humid atmosphere.

Mr. Wimbish: Now, if you ship the grain from St. Louis to Nashville, you move it all the way on the river in a low, humid atmosphere, do you not?

Mr. McClellan: Yes sir.

Mr. Wimbish: Isn't that much more deleterious to the grain than a rail shipment, shorter in length from St. Louis to Atlanta?

Mr. McClellan: I never tried it.

Mr. Wimbish: Are you familiar with the situation of Atlanta geographically?

Mr. McClellan: Atlanta?

Mr. Wimbish: Yes.

Mr. McClellan: Yes, I guess so.

Mr. Wimbish: Do you know its altitude?

514 Mr. McClellan: No.

Mr. Wimbish: Do you know its relative humidity as compared with Nashville?

Mr. McClellan: No sir.

Mr. Wimbish: Are you sufficiently familiar with the two cities to be able to state that Atlanta has much the drier atmosphere?

Mr. McClellan: No; I do not know that.

Mr. Wimbish: If it had, then would that not be a better place to handle and protect grain than Nashville, which would be more humid?

Mr. McClellan: No.

Mr. Wimbish: Why not?

Mr. McClellan: Because, as I stated, corn might arrive at Nashville in a condition that indicated it was getting out of condition, and before it could possibly get to Atlanta it would be ruined.

Mr. Wimbish: It might do the same thing at St. Louis before it gets to Nashville. But my question is whether a dry atmosphere is not very much better adapted to the protection and handling of grain and its storage than a humid atmosphere?

Mr. McClellan: We get the dry atmosphere in our driers.

515 Mr. Wimbish: Oh, yes. Now, Mr. McClellan, you say there are some dealers in the northwest that won't sell in the southeast at certain seasons because it is the germinating season?

Mr. McClellan: Yes sir.

Mr. Wimbish: And then you gave your reason for that as being that if they sold to Atlanta or the southeast there would be no driers there. Suppose you had no driers at Atlanta. Would they at Atlanta any more than at Nashville?

Mr. McClellan: I could not say. I do not think they would be as inclined to ship there as they do to Nashville.

Mr. Wimbish: Why not?

Mr. McClellan: It is too far away.

Mr. Wimbish: How much farther away?

Mr. McClellan: Anywhere from 3 days to a week.

Mr. Wimbish: Mr. McClellan, suppose it was a through shipment of wheat from Kansas City to Atlanta. Now that wheat can come either by St. Louis, Evansville, Nashville, Chattanooga or it can come by Memphis, the Southern Railway and Chattanooga, or can come by several lines into Atlanta. Now, the difference in the length of haul from Kansas City to Atlanta over the short line as compared with the haul from the same point to Nashville would be what; would there be 12 hours' difference?

Mr. McClellan: It ought not to be; no.

516 Mr. Wimbish: That is all, sir.

Redirect examination:

Mr. McConnico: You say you are not familiar with the usual means employed to protect the grain where it is handled by boat with respect to keeping it dry and preventing the progress of the decay?

Mr. McClellan: Yes.

Mr. McConnico: You are not familiar: you do not know about it?

Mr. McClellan: Yes.

Mr. McConnico: Now, you were asked by Mr. Wimbish with respect to the dry atmosphere at Atlanta. I do not know how dry it is there myself, but does the grain in getting to Atlanta move through atmospheres that are not always dry?

Mr. McClellan: That would not affect the contents of the car.

Mr. McConnico: It would not?

Mr. McClellan: Not very much.

Mr. McConnico: I will ask you if the cause of the damage to the grain is not more particularly the presence of the moisture that is frozen in the grain when it starts?

Mr. McClellan: Entirely.

517 Mr. McConnico: And that just as the grain comes into the warmer climate that largely causes its damage.

Mr. McClellan: Entirely.

Commissioner Clements: Well, if the dampness was in the grain, frozen in the grain, wouldn't the grain be about done for, whether it was thawed out in Nashville or wherever it was?

Mr. McClellan: No, indeed.

Commissioner Clements: It would be all right, would it?

Mr. Pitts: It is always in that condition in the higher altitudes.

Mr. McConnico: Is that true, Mr. McClellan?

Mr. McClellan: Yes; that is true.

Mr. McConnico: And I understand you to say that by the time the grain got to the Ohio River gateways that danger might not be discovered and it might not need treatment there, but at the time it got to Nashville you could see that it might need treatment farther south, and at Atlanta it might be too late. Is that sound and true?

Mr. McClellan: Yes; I have seen grain that was No. 2 get heated in 24 hours.

Commissioner Clements: You say—would you have any objection to telling about what the volume of your business in Atlanta is, either in bushels or dollars?

518 Mr. McClellan: We handle about 115 bushels a year.

Commissioner Clements: What proportion of that is disposed of in Nashville or in the community of Nashville, locally, and what proportion of it goes on, in round, approximate figures?

Mr. McClellan: I do very little business in Nashville; practically no more than 5 per cent. of my business.

Mr. Pitts: 95 per cent. then goes through?

Mr. McClellan: That would be a fair statement.

Commissioner Clements: Goes through to points where this transit privilege would apply?

Mr. McClellan: Our elevators are located where we are not convenient to the city trade.

Mr. Wimbish: Do you know what proportion of that would apply to the whole business of Nashville? Is there more grain shipped in to Nashville than shipped out?

Mr. McClellan: Is more grain hauled?

Mr. Wimbish: Is there more grain brought in to Nashville than is shipped out?

Mr. McClellan: I would say yes.

Mr. Wimbish: Yes.

Mr. McClellan: I do not know the figures, but the local consumption is quite considerable.

Mr. Wimbish: Greater than the local production?

519 Mr. McClellan: More than the immediate local production; yes sir.

Mr. McConnico: They have large mills at Nashville, have they not?

Mr. McClellan: Yes.

Mr. McConnico: I forgot to ask you in respect to sacking facilities of grain. How does Nashville's sacking facilities compare with the other markets?

Mr. McClellan: I guess, the largest in the world.

Mr. McConnico: That is all.

Commissioner Clements: You were asked awhile ago if this was found to be an unjust discrimination, this milling in transit at Nashville and the refusal of it at the other places, and the carriers undertook to comply with such ruling as that by withdrawing it at Nashville, what would be the consequences, and you answered that. Suppose they undertook to comply with such a ruling as that. I do not mean to intimate anything about the outcome of this case. From both standpoints, what would be the effect upon your business and upon men engaged in the same business as you are, if they complied by extending the privileges to other places and still others in like situations?

20 Mr. McClellan: It would very largely increase my competition, I suppose.

Commissioner Clements: There would be nothing unlawful in that, would there, if it was done by fair means?

Mr. McClellan: No sir.

Commissioner Clements: But, really, what the question was was how it would affect your business.

Mr. McClellan: That is hard for me to answer. I do not know how it would affect it. I would try not to let it affect it at all.

Commissioner Clements: Of course.

Mr. McConnico: It would produce more active competition, and the tendency of that would be to decrease your sales and perhaps your profits?

Mr. McClellan: Unquestionably.

Mr. McConnico: And you would have to try to meet that competition so far as it was lawful?

Mr. McClellan: Yes sir.

Mr. McConnico: And you would try to meet that just as rail lines at Nashville have tried to meet the competition from the Cumberland River boats, in the best available way you could?

Mr. McClellan: Yes sir.

521 E. M. KELLY, called as a witness and having been first duly sworn, testified as follows:

Mr. McConnico: What is your name, please.

Mr. Kelly: E. M. Kelly.

Mr. McConnico: Where do you reside?

Mr. Kelly: In Nashville.

Mr. McConnico: How long have you resided in Nashville?

Mr. Kelly: 53 years.

Mr. McConnico: What business are you now engaged in?

Mr. Kelly: The milling business.

Mr. McConnico: How long have you been in that business?

Mr. Kelly: I am sort of ashamed to tell you. Actively, since 1874.

Mr. McConnico: At Nashville?

Mr. Kelly: At Nashville.

Mr. McConnico: With what company are you now connected, and in what capacity?

Mr. Kelly: With the Liberty Mills, of which I am president.

Mr. McConnico: How old is that mill at Nashville; how long has it been running?

Mr. Kelly: I think it is 19 years, possibly twenty. I think it was organized in 1890.

522 Mr. McConnico: As the Liberty Mill?

Mr. Kelly: Yes.

Mr. McConnico: With what mill were you connected prior to that time?

Mr. Kelly: Well, with several. Immediately before that, with the American Milling Company.

Mr. McConnico: What is the capacity of your present milling plant at Nashville?

Mr. Kelly: Our capacity is 3500 barrels of flour, and 2,000 barrels of corn.

Mr. McConnico: How long have you been familiar with the grain traffic and the grain situation at Nashville?

Mr. Kelly: Since 1874.

Mr. McConnico: State whether or not in 1874 the Cumberland River was bringing in very much more grain than it now is, into Nashville?

Mr. Kelly: My impression is that it did bring in more, though I have not the statistics. I think there were more boats on the river then than now.

Mr. McConnico: Is your mill located exclusively on the rail lines?

Mr. Kelly: It is.

Mr. McConnico: Has it been so located upon the faith of the milling in transit privileges extended by the carriers to Nash-
523 ville?

Mr. Kelly: It was.

Mr. McConnico: Are the other handling facilities for grain and grain products and hay and the other mills in Nashville almost entirely located upon the rail lines upon the faith of these privileges?

Mr. Kelly: I know they are all located on the rail lines; only one on both, they are predicated entirely upon the confidence of having the reconsigning privilege.

Mr. McConnico: At all events, they have so located themselves during the period of time when these privileges were being extended to them by the carriers?

Mr. Kelly: Yes sir.

Mr. McConnico: Continuously, up to the present, for a great many years?

Mr. Kelly: Yes sir.

Mr. McConnico: What would be the effect, Mr. Kelly, upon the grain business at Nashville, and the grain dealers at Nashville, so far as their fixed investments are concerned, who are located exclusively upon the rail lines, if the reshipping privilege as extended by the carriers on grain and grain products were withdrawn and the full local in and the full local out was charged by the carriers?

524 Mr. Kelly: I should say that the plants located on the rail lines and not located on the river, if the reconsigning privilege were withdrawn, could meet competition from other markets, from other Ohio River gateways. They would have to contend with the drayage charge of a cent a bushel.

Mr. McConnico: They would be compelled, then, to either quit business at Nashville or reorganize their business on a basis of the river?

Mr. Kelly: Yes.

Mr. McConnico: For the inbound movement of the grain into Nashville from the Ohio River gateways?

Mr. Kelly: They would.

Mr. McConnico: Would it be possible, and could it be done at the expense of time and large investments, for the grain that is marketed and milled in Nashville to be brought in by boats on the Cumberland River?

Mr. Kelly: It would be possible, if they had boats enough in the river.

Mr. McConnico: I will ask you if the navigation season on the Cumberland River does not correspond with the grain shipping season from November, we will say, until July or August?

Mr. Kelly: It does in corn, but not altogether in wheat. The wheat harvest at Nashville begins about the 1st of July. I
525 do not think we usually have very good until July and August.

Mr. McConnico: But with respect to corn, the navigation season is coextensive with the amount of the grain?

Mr. Kelly: Yes sir.

Mr. McConnico: What would be the effect upon the established business of the grain dealers at Nashville, aside from their fixed investments that are located exclusively on the rail lines—what would be the effect on their business if they had to stop doing business as they are at present organized, and rebuild their business on a purely river basis for the inbound movement of their grain?

Mr. Kelly: It depends on how long it would take them to rebuild. If they were out of business for a year, they would have to build up another business.

Mr. McConnico: Is the grain business one in which competition is sharp and active?

Mr. Kelly: Yes sir.

Mr. McConnico: With what markets are the dealers in Nashville in competition?

Mr. Kelly: You mean for southeastern trade?

Mr. McConnico: Yes sir.

Mr. Kelly: With all Ohio River crossings and all western markets—grain markets.

526 Mr. McConnico: I will ask you, Mr. Kelly, if your mills that you now represent have brought in grain by boat on the Cumberland River, or have purchased any grain every year, more or less, that comes in by boats on the Cumberland River?

Mr. Kelly: We have brought wheat to Nashville by Cumberland River boats, every year.

Mr. McConnico: Every year?

Mr. Kelly: Yes sir.

Mr. McConnico: I will ask you to state during this present year how much of your grain you have bought that came in by boat?

Mr. Kelly: During July and August we bought 65,000 bushels of wheat from Mississippi River landings all the way to Nashville by boat, and since about the 1st of March we expect we have brought about 100,000 bushels of grain from Ohio River landings all the way by boat.

Mr. McConnico: Is there an incline in the Tennessee Central Railroad tracks right down to the edge of the Cumberland River?

Mr. Kelly: There is, but I never use it.

Mr. McConnico: What do you do?

Mr. Kelly: We use it through the Ryman warehouse. We have another name for it now—Rail and River House.

Mr. McConnico: That is the elevator that is located on the
527 east side of the Cumberland River and on the tracks of the L. & N. Railroad?

Mr. Kelly: Yes sir.

Mr. McConnico: I will ask you if your milling company ever had occasion to charter a boat to bring grain into Nashville? If so, when was it and what was that occasion, and to what extent did it bring grain in to Nashville?

Mr. Kelly: I really cannot recall the year.

Mr. McConnico: Approximate it. About how long?

Mr. Kelly: I presume, four or five or six years ago; I could not get empty cars. They were scarce. I chartered the Belle of Ca-

houn, a steamboat belonging to a party in St. Louis, and I made five round trips with the boat, hauling wheat from St. Louis elevators to Nashville, and hauling back across ties from the mouth of the river to St. Louis.

Mr. McConnico: After you had made five trips did you get any cars?

Mr. Kelly: They gave me 250 cars in five days. They loaded out a quarter of a million bushels in five days, and I did not need the boat any longer.

Commissioner Clements: You mean they loaded out from St. Louis——

Mr. Kelly: Well, they sent one of those big side wheelers
528 from St. Louis. They brought 91 bags of corn on it to Nashville; and I imagine the railroads did not want any permanent steamboat line plying from St. Louis to Nashville, and they gave me cars.

Commissioner Clements: How many cars did you say—250?

Mr. Kelly: Yes sir.

Commissioner Clements: How many bushels of grain?

Mr. Kelly: One-quarter of a million bushels,—a thousand bushels to the car.

Commissioner Clements: My question was, was that brought to Nashville by your concern?

Mr. Kelly: Yes sir.

Commissioner Clements: And then shipped out, the larger part of it?

Mr. Kelly: It was ground. We do not sell grain at all; we only sell the products.

Mr. McConnico: If this reshipping privilege at Nashville were abolished or withdrawn and the grain interests at Nashville had to be reorganized on an exclusively river basis for the in-bound movement of that grain, state whether or not in your opinion and from your knowledge of conditions, especially river conditions at Nash-
ville, there would enter the commercial boat lines that would
529 be sufficient to handle the grain up to Nashville?

Mr. Kelly: I really could not say——

Mr. McConnico: If the privileges were withdrawn and the sum of the local in and out was charged.

Mr. Kelly: I do not know how successful the boats would be, because the moment you put the boats in there the railroad would cut the rates.

Mr. McConnico: Assuming that the full local in and the full local out, as at present fixed by the tariffs, was kept as the rate by the railroad company, would boat lines sufficient to handle the business be attracted into the Cumberland river?

Mr. Kelly: I think the river would be full of them.

Mr. McConnico: Could they handle the business?

Mr. Kelly: Oh, yes; they could do that.

Mr. McConnico: From your knowledge of the Cumberland River and the conditions at Nashville, I will ask you to state what, in your judgment, with packets and barges the grain can be handled for

from these Ohio River crossing towns up to Nashville, from any point?

Mr. Kelly: We are not steamboat people, and I do not know much about the cost. I will say, however, that I bought a good many cargoes of corn and wheat from dealers on the Ohio River
530 who chartered a tug and sent the grain down in barges, and in conversation with them they told me they could carry it down that way for 6 cents a hundred. We had nothing to do with the transportation. We bought at a certain price delivered in Nashville.

Mr. McConnico: Is that the general understanding in Nashville, that the grain would be brought in from these River crossings with just ordinary tugs and barges at approximately 6 cents a hundred and the boats make something for their trouble?

Mr. Kelly: I do not know how much the boats made, but it has been brought there at that rate frequently.

Mr. McConnico: Now, with modern equipment, we will say—we will take steel barges and tugs, or gasoline tugs. I see they are coming in vogue now. With the most modern equipment and facilities on the river bank for the handling of the grain and the most modern methods of transportation by water, and the most economic methods now known, I will ask you to state what in your judgment that grain could be brought into Nashville and these Ohio River gateways for?

Mr. Kelly: It could undoubtedly be brought in for a good deal less money. If barge lines had loads both ways, I think it would be cut very nearly half in two. That is, if they carried no
531 deck hands and had no landings, like these other boats.

Commissioner Clements: We will take a recess at this point until 2 o'clock.

(Whereupon at 1:03 o'clock p. m., a recess was taken until 2 o'clock p. m.)

532 After Recess.

Commissioner Clements: Gentlemen, we will resume the examination of the last witness who was on the stand, Mr. Kelly. Is Mr. Kelly here?

Mr. Wimbish: Did you finish with Mr. Kelly?

Mr. McConnico: No, sir; I was not through with Mr. Kelly.

Commissioner Clements: I suppose he did not assume that we were through with him?

Mr. McConnico: No, sir; he did not assume that we were through with him. There are two other grain men whom I would like to examine briefly, but I do not see them here.

(At this point, Mr. Kelly appeared and resumed the stand for further direct examination.)

Mr. McConnico: Mr. Kelly, it has been suggested that grain moving into Nashville by boat would be longer in transit, perhaps, than grain moving into Atlanta by rail. I will ask you with respect to

the likelihood of damage to grain in shipment by boat as compared to shipment in cars, how they guard against damage in shipment?

Mr. Kelly: In shipping grain in cars, it is usually shipped in bulk; that is, from the west into Nashville. It is confined in a closed car; it gets very little air. In shipping grain on a
533 steamboat it is always in sacks. The motion of the boat creates a current of air, and that has a tendency to cool it off. Now, as for the time taken, comparing the time between St. Louis and Nashville by boat and St. Louis and Atlanta by rail—is that the question?

Mr. McConnico: Yes, sir.

Mr. Kelly: Ordinarily in the spring, when we have damage to grain, traffic over railroads is somewhat congested. That is a heavy shipping season, and I imagine that shipments from St. Louis to Atlanta by rail would average something like ten or twelve days. I believe that would be a reasonable time. When we ran a boat from St. Louis to Nashville, we made a round trip in six days. That is, it took three days to go from St. Louis to Nashville; it took less than three days. We loaded up at both ends.

Mr. McConnico: When grain is handled in big boats, in sacks, is it usually carried above the deck line, piled on the deck?

Mr. Kelly: Yes, sir.

Mr. McConnico: Does it get air?

Mr. Kelly: Yes, sir.

Mr. McConnico: I hand you Exhibit No. 3 to Major Stahlman's testimony, a photograph of the wharf at Nashville, and I will ask you if there appears piled upon the deck of two of the steam-
534 boats numerous sacks of grain, apparently, and if that is the way the packet boats handle grain on the Cumberland river (handing photograph to witness)?

Mr. Kelly: The first two boats have grain piled up on the front of the boat.

Mr. McConnico: That is the usual way of handling in sacks on a packet boat?

Mr. Kelly: That is the usual way.

Mr. McConnico: Do you know with respect to how grain is protected if it is shipped in barges or boats below the water line?

Mr. Kelly: They air the grain often, if it is stored below the water line.

Mr. McConnico: That is the understanding of the trade?

Mr. Kelly: That is the understanding of the trade. We have never shipped any.

Mr. McConnico: I want to ask Mr. Kelly with respect to the liability of grain spoiling in transit when shipped from colder into warmer climates.

Mr. Kelly: Well, in the spring, in the germinating season as it is termed, the prevailing temperature north of the Ohio River where the grain originates, the shipments originate, is usually be-
535 low 32; in other words, it is freezing. The normal temperature during the winter is below the freezing point. During that season of the year the normal temperature in Nashville is-

slightly above freezing. A shipment out of central Illinois, of corn, in which the moisture is frozen, moving into a warmer climate and being boxed up in a car where it can get no air, is very liable to heat.

Mr. McConnico: Now, when that shipment of grain moves from that colder climate into one of these Ohio River crossings, we will say, might it not be true that at that point the grain would not need any rehandling, apparently, and that some of the grain at the time it reaches Nashville might reveal, upon inspection, that it needed instant rehandling?

Mr. Kelly: Yes, sir.

Mr. McConnico: That proposition is sound and true?

Mr. Kelly: Yes, sir.

Mr. McConnico: And is it sound and true that that same grain, if not rehandled at Nashville, or before it got to Atlanta, would be spoiled?

Mr. Kelly: That is true also.

Mr. McConnico: That is sound and true. I will ask you, then, what you have to say with respect to Nashville's being, both
536 with respect to climatic condition and in location on the through haul, a logical and favorable place for the rehandling of grain in order to protect the grain itself, as compared with the Ohio River crossings or points as far south as these southeastern points named in the complaint.

Mr. Kelly: I think Nashville would be a better point than any Ohio River crossing, for the reason that the shipment originating in central Illinois, say, where the grain is in a frozen condition, would get to an Ohio River crossing probably in a day or two days—possibly three days—and in that time it would hardly be in a damaged condition. It would not have been confined long enough.

Mr. McConnico: And would still be in a comparatively cold climate?

Mr. Kelly: Yes. But by the time it gets to Nashville—Nashville is somewhat warmer than the Ohio River crossings. It is more likely to show evidence of moisture in the grain and you can tell whether it would be safe to let it go forward or not. I will say that dealers sometimes take a chance and do let it go forward.

Mr. McConnico: I will ask you, Mr. Kelly, if the trade has realized and the carriers have realized that Nashville is a
537 logical and appropriate place for the handling of grain for it to be properly conditioned in its haul towards the southeast, and if, consequently, large handling and drying facilities have located themselves at Nashville?

Mr. Kelly: They have.

Mr. McConnico: Do you know of any facilities by which the grain can be conditioned by artificial heat at all, that are south of Nashville, in southeastern territory?

Mr. Kelly: I do not know; I have not heard of any. I should not think there would be, from the fact that 3 years ago I know the railroads returned at least 150,000 bushels from Atlanta to Nashville to be dried, so I was told, and 90,000 bushels from Birming-

ham. They sent 150,000 bushels—I know one man that sent 150,000 bushels from St. Louis to Nashville to be dried because there was no drier in St. Louis.

Mr. McConnico: Was that 150,000 bushels sent to the drying plant of your concern?

Mr. Kelly: No; it was sent to the Hermitage Elevators. I was in St. Louis at the time. Mr. Updike had 150 cars of corn in St. Louis that was in a damaged condition. He asked me if I could dry it for him. We have a drier also. I told him I could not
538 undertake it, because we had 80 or 90 cars on track ourselves. I suggested the Hermitage Elevator Company. I knew they had driers, but he claimed they were three weeks behind on drying and that his would be damaged before it could get through the drier at that elevator. I asked him then to call up the Hermitage Elevator, who have a very large drying plant, and he did so and shipped the corn to the Hermitage Elevator to be dried. They had no drier in St. Louis. I will just explain that. In those northern colder climates they do not need driers, because the corn stays cold. It would not be damaged unless it was shipped into warmer climates, into more southern territory.

Mr. McConnico: I will ask you with respect to the size of the facilities at Nashville for the drying of grain, by means of artificial heat, and their capacity. Describe that, please.

Mr. Kelly: We have driers that will dry about 7500 bushels a day. The Nashville Elevators have about the same capacity. I do not know of my own knowledge what the Hermitage capacity is, but I would say it will handle a thousand bushels an hour; that is, 24,000 bushels a day.

Mr. McConnico: Do you know of any drying facilities at all at any of the Mississippi and Ohio River crossings?

Mr. Kelly: There is now one at Henderson, and one at
539 Cairo, I understand.

Mr. McConnico: How long have they been there.

Mr. Kelly: I think Henderson's was established three or four years ago. I do not know the time the Cairo was established.

Mr. McConnico: Then, prior to three or four years ago, were there any drying facilities whatever at any of the Ohio River gateways?

Mr. Kelly: None that I know of at all.

Mr. McConnico: How long has Nashville had drying facilities?

Mr. Kelly: I could not say positively. We have had them about ten years.

Mr. McConnico: To what extent has Nashville sacking facilities as compared with the other points on the Ohio River?

Mr. Kelly: Every dealer there who has an elevator has a sacking machine. The public houses also have sacking machines. I do not know how their capacity compares with other markets, because I am not so familiar with the other markets in that respect.

Mr. McConnico: But they have large——

Mr. Kelly: Very large capacity for sacking grain.

Mr. McConnico: That is all.

540 Cross-examination:

Mr. Wimbish: Mr. Kelly, do the Liberty Mills enjoy or exercise any transit privileges other than milling in transit?

Mr. Kelly: We ship no grain at all.

Mr. Wimbish: Is there any privilege that you exercise, other than milling in transit?

Mr. Kelly: No, sir.

Mr. Wimbish: None whatever?

Mr. Kelly: None that I recall.

Mr. Wimbish: Milling in transit is already extended through the southeast and the territory in which you sell, and in which you compete, is it not?

Mr. Kelly: It is.

Mr. Wimbish: How then could you be hurt and how could your investment be affected if other transit privileges were extended to other cities?

Mr. Kelly: You mean reshipping of grain? I could not say that it would affect us.

Mr. Wimbish: You would not be affected at all?

Mr. Kelly: Not at all.

Mr. Wimbish: Your investment is not at stake?

Mr. Kelly: Not as long as we retain milling in transit.

Mr. Wimbish: And you do have that all over the country.

Mr. Kelly: Yes, sir.

541 Mr. Wimbish: Now, speaking of the climatic conditions existing at Nashville for the storage of wheat and grain, could you give your reasons—do you think Atlanta is a warmer climate than Nashville?

Mr. Kelly: I think you misunderstand me. I did not refer to the climatic conditions at Nashville at all. I referred only to its location on the through route, being a half-way point.

Mr. Wimbish: Then you do not think that the climatic conditions at Nashville have anything to do with it?

Mr. Kelly: No, sir; I think that a shipment of frozen grain out of a cold climate into a climate that is as warm as Nashville or Atlanta, either one, if confined in a closed car a sufficient length of time, will heat. It is not so liable to heat in half the time as it would if it stayed in the car the whole length of the trip to Atlanta.

Mr. Wimbish: That is very evident. May it not be entirely possible that you have more driers in Nashville than any other market, because you need them more, due to your hot, humid climate?

Mr. Kelly: I do not think that is the case. I do not think they need them any more there than they would in Chattanooga, or Atlanta or Augusta or at any other point.

542 Mr. Wimbish: If Atlanta is a cool and a very much drier climate, would not grain keep much better?

Mr. Kelly: Not if the grain had the moisture in it before it was shipped to Atlanta, unless it could be spread out and aired.

Mr. Wimbish: If the same facilities could be provided?

Mr. Kelly: Yes, sir.

Mr. Wimbish: If the climate were drier and cooler, it would require less use of those facilities?

Mr. Kelly: If the corn would last until it got to Atlanta. I do not think it would.

Mr. Wimbish: Do you think the great danger is in the difference in the haul?

Mr. Kelly: The length of time.

Mr. Wimbish: And because Nashville is nearer in point of time to the corn producing fields, and because Nashville is the natural and logical concentrating point, and not because of its climate?

Mr. Kelly: That is right.

Mr. Wimbish: Very well. I understand you to say that grain coming by boat was always sacked?

Mr. Kelly: Yes, sir.

Mr. Wimbish: Does sacked grain require any elevation
543 services?

Mr. Kelly: Not so much as bulk grain. Frequently it is in a moist condition.

Mr. Wimbish: You bring the grain into Nashville sacked?

Mr. Kelly: Some times in cars.

Mr. Wimbish: I am speaking of the river. It always comes sacked?

Mr. Kelly: Yes, sir.

Mr. Wimbish: That service has already been performed?

Mr. Kelly: Yes, sir.

Mr. Wimbish: When you get it in, you do not leave that grain on the boat; you have to unload it just as you would from any other vehicle, and dray it to your elevator or into your warehouse?

Mr. Kelly: Yes; that is right.

Mr. Wimbish: Or into the railroad train, if you want to reship?

Mr. Kelly: Yes, sir.

Mr. Wimbish: Now, if you want to elevate that grain or clean it, or perform any of those services, then you have got to unsack it, perform the service, elevate it, and resack it or reload it?

Mr. Kelly: That is right.

544 Mr. Wimbish: Grain coming in by the river has no reshipping or rebilling privilege or elevation privilege?

Mr. Kelly: None at all.

Mr. Wimbish: Then, would there be economy in having transit privileges in Nashville to be used in connection with river grain?

Mr. Kelly: We have not. We have never had any.

Mr. Wimbish: You do not use it, although you have the privilege.

Mr. Kelly: No; we have not the privilege; never have had it.

Mr. Wimbish: I should have said you have the facilities.

Mr. Kelly: For handling——

Mr. Wimbish: For elevating grain and drying it, and all that?

Mr. Kelly: Yes sir.

Mr. Wimbish: But you do not apply those facilities to the river grain?

Mr. Kelly: Oh, yes we do. We handle it through the same ele-

vator that rail shipments are handled through, if that is what you mean.

Mr. Wimbish: What is the advantage of an elevator for sacked grain?

545 Mr. Kelly: You can dump the sacks, you know, and store more of it in an elevator than you could piled up in sacks.

Mr. Wimbish: That is all.

H. H. HUGHES, called as a witness and having been first duly sworn, testified as follows:

Mr. McConnico: Mr. Hughes, give your name to the stenographer.

Mr. Hughes: H. H. Hughes.

Mr. McConnico: And where do you reside, Mr. Hughes?

Mr. Hughes: Nashville.

Mr. McConnico: In what business are you.

Mr. Hughes: Grain business.

Mr. McConnico: What is the name of your business concern?

Mr. Hughes: I have two—the Hughes Warehouse and Elevator Company——

Mr. McConnico: And the other?

Mr. Hughes: The Just Milling & Feed Co.

Mr. McConnico: How long have you been in the grain business at Nashville?

Mr. Hughes: Fifteen years.

Mr. McConnico: How long in the grain business altogther?

546 Mr. Hughes: About the same time.

Mr. McConnico: Do you deal in grain?

Mr. Hughes: Yes sir.

Mr. McConnico: You are a grain shipper?

Mr. Hughes: Yes sir.

Mr. Connico: From what sources do you draw the grain that you handle?

Mr. Hughes: Mostly from Illinois and Nebraska.

Mr. McConnico: In what states do you sell chiefly?

Mr. Hughes: In the southeast and the Carolinas.

Mr. McConnico: Have you any investment in the way of elevators and warehouses, or do you handle your business as through public elevators?

Mr. Hughes: We have our own.

Mr. McConnico: Where is it located, Mr. Hughes, with respect to the river or the rail?

Mr. Hughes: It is on all the roads; it is a mile from the river—three-quarters of a mile.

Mr. McConnico: By all the roads, you mean it has direct connections with the Louisville & Nashville, the Nashville, Chattanooga and St. Louis, and the Tennessee Central?

Mr. Hughes: Yes sir.

547 Mr. McConnico: About what is the size of the investment of your concerns in elevators and warehouses, located exclusively on these rail lines?

Mr. Hughes: About $140,000.

Mr. McConnico: If the reshipping practices at Nashville were withdrawn or abolished and the carriers were to charge the full tariff local in and the local out, I will ask you what effect that will have upon the value of your fixed investment for handling the grain, that is located on the rail lines?

Mr. Hughes: Well, I will hardly be able to answer that. From the fact that our elevator and warehouse is located so that we can do a large local business, and we do a large local business. But I should say that the elevator proper would not be worth 10 cents on a dollar.

Mr. McConnico: What proportion of your business is local business, as compared with shipments into southeastern and Carolina territory.

Mr. Hughes: I do not understand that just exactly. What per cent of the business is local?

Mr. McConnico: Yes.

Mr. Hughes: I should judge we do, say, $300,000 worth of local business.

548 Mr. McConnico: And how much other business?

Mr. Hughes: Comparing from the last year, I think we have done something like three and one-half million dollars, last year.

Mr. McConnico: Mr. Hughes, if the carriers at Nashville were to withdraw transit privileges there extended and were to maintain their present tariff rates in and out, state whether or not from your observation and knowledge of conditions at Nashville and especially with respect to the Cumberland River, could the grain be brought into Nashville by boat, and would the boats come to the river for the traffic?

Mr. Hughes: Without a doubt, if they had any guarantee that the railroads would hold their present tariffs. It would be a fine opportunity.

Mr. McConnico: At what rate, from your knowledge and experience, will ordinary tow boats and barges carry grain into Nashville from these Ohio and Mississippi River crossings?

Mr. Hughes: Do you mean by doing a specific work or doing packet work?

Mr. McConnico: Specific work.

Mr. Hughes: I should judge they ought to be able to do it very nicely for 5 or 6 cents.

Mr. McConnico: That is, with ordinary equipment?

549 Mr. Hughes: Yes.

Mr. McConnico: Now, suppose that there were improved equipment of the very best well-known type. Take steel barges and tugs constructed especially with respect to that business, that would not make local landings, that would minimize labor and economize in all the well-known modern ways. I will ask you to state what, in your judgment the grain that is now coming into the Nashville market could be handled at from these river crossings up to Nashville by the river?

Mr. Hughes: Mr. McConnico, I should judge that if a condition like that should exist, there would only be one point. If you could pick up this grain at different points, of course it would be a different charge on it.

Mr. McConnico: Well, we will assume that handling point to be in one of the Ohio River crossings. At what rate, with these modern facilities, could that grain be brought into Nashville by river?

Mr. Hughes: 3 cents.

Commissioner Clements: With a fair profit to the boat lines, do you think?

Mr. Hughes: I do not think there is any question about that.

Commissioner Clements: What would be the natural point on the direct line of this grain coming from the territory that
550 it does come from—from Cairo or East St. Louis——

Mr. Hughes: Oh, no. The Q. Railroad comes down to the Ohio River from practically—is it Thebes?

Commissioner Clements: Thebes.

Mr. Hughes: They put up an elevator there on the river, right opposite the Cumberland River mouth at Paducah. If they could load the grain without having any expense at all and put it into their boats, it would be sort of like cars, except they would not have any side tracks.

Mr. McConnico: I want to ask you, Mr. Hughes, in respect to the location of Nashville as compared with these Ohio River crossings on the north and as compared with Atlanta and the southeastern points named in this case, to the south and southeast, with respect to being a favorable place at which to interrupt a through movement of the grain for the purpose of protecting the grain. Describe, if you please, how if at all Nashville is a better place for that to be done in the interests of protecting the grain.

Mr. Hughes: Well, I would take it, gentlemen, that protection of the grain is not a question of climate at all. The inherent condition of the grain, especially corn—we will eliminate wheat, because its germinating period is in the fall of the year, but
551 the spring of the year is the time when corn goes to germinating and it follows down the line. We will start in central Illinois, and it is probably the first 15 days in April before the period of its growth or reproduction will start and it comes on down. Now, at Atlanta, it is a great deal earlier than that. At Nashville it is a little bit later than that. The Ohio River comes down here and it makes a big curve, and the Tennessee River comes in here, and the Wabash over there. We are at the point of the peninsula, as it were—at the upper point of that peninsula—and on account of its geographical situation, from a standpoint of distance in the zone by which in the spring of the year it follows down to the time when corn will go to growing again, we are at a place which is the best, in my judgment, of any that I know of. I had that matter up considerably before investing anything in my business at Atlanta.

Mr. McConnico: Now, you say that climate has nothing to do with it?

Mr. Hughes: Climatic conditions do not. It is the inherent condition of the commodity.

Mr. McConnico: The inherent condition of the commodity is the primary cause——

Mr. Hughes: That is the idea exactly.

552 Mr. McConnico: This movement from the colder into a warmer climate, however, hastens that.

Mr. Hughes: Certainly.

Mr. McConnico: And might it not be true that a shipment of grain moving from the colder producing territory into these Ohio River gateways, even at that point, might not apparently need treatment, and that grain by the time it reaches Nashville on its way to southeastern consuming territory, might be plainly seen to need treatment, and there it might be conditioned and saved and that some of the grain, if carried on to Atlanta and these other southeastern points, might spoil before it got there.

Mr. Hughes: Absolutely.

Mr. McConnico: That proposition is sound and correct, is it?

Mr. Hughes: Yes, sir.

Mr. McConnico: I will ask you, Mr. Hughes, if by reason of that fact and the favorable location of Nashville with respect to the length of the haul and its climatic conditions, or rather its temperature, the trade has realized that Nashville is the logical place for the grain to be conditioned, and if, consequently, large investments have been made there in handling facilities that will give the grain the proper treatment all along the haul, to save the grain?

553 Mr. Hughes: Certainly.

Mr. McConnico: You mentioned the fact that you investigated that question somewhat before you made your large investments in Nashville. I will ask you if you also, Mr. Hughes, made those large investments on the faith of the reshipping privileges at Nashville that these carriers have been extending for so many years?

Mr. Hughes: Absolutely.

Mr. McConnico: If those reshipping privileges were withdrawn and the sum of the local rates were maintained by the carriers in and out of Nashville, could you do business at Nashville at all without you reorganized on the basis of using the Cumberland River for your inbound movement?

Mr. Hughes: That is too broad.

Mr. McConnico: Well, in what respect is it too broad, and how would you be limited——

Mr. Hughes: I could not give any; that is an absurdity.

Mr. McConnico: That is, with respect to the small per cent of your business that you have heretofore mentioned, you could keep on, but with respect to the larger per cent you would be put out of business if you did not go some place else or locate on the river?

Mr. Hughes: Certainly.

554 Mr. McConnico: I want to ask, Mr. Hughes, with respect to the liability of grain to be damaged in transit or to develop this decaying process in transit when moved by boat, as it is moved, as compared to its movement in cars.

Mr. Hughes: Well, you know at the present there is no grain handled in bulk on the river, in other words it is put up on deck, put on the forward deck, one bag laid down like that (illustrating) and another like that, like a log cabin. That leaves a space of air both ways. I remember during the hot corn period, three or four years ago, that the Nashville, Chattanooga and St. Louis Railroad had 40,000 bags of grain that it packed up on the Mississippi River and brought up to Johnsonville, and it put an embargo on it and would not let it come out and we had corn all through this country absolutely just ruined.

Mr. McConnico: Who put an embargo on it?

Mr. Hughes: The railroads, because they could not handle it. We put the grain in to the Johnsonville elevator and it came out in fine shape.

Mr. McConnico: How long did it stay there?

Mr. Hughes: I should judge six weeks or two months.

555 Mr. McConnico: Then, from your experience, you will say that in transporting grain as it is done on packet boats or on barges, in sacks, that the way the grain is piled will provide all ventilation necessary to protect the grain in transit?

Mr. Hughes: I would not want to state it that broad, because if it stayed in the barge it might be damaged, but in the minute that you turn the grain there it has a tendency to air it up again.

Mr. McConnico: Do you know with respect to the shipment of grain in barges, below the water line?

Mr. Hughes: Well, it will be the same temperature the whole time that it is in transit. You take grain that is destined for export and they carry a lower grade of corn than our general commodity. In other words, our general commodity is a great deal better grade. They have a steamer corn, and when it is put in a vessel below the water line it stays right there. If it has 19 per cent of moisture it will come out 18 or 19½ or something like that.

Mr. McConnico: It will not damage, then, when shipped below the water line in bulk?

Mr. Hughes: That is right.

Cross-examination:

556 Mr. Wimbish: The usual effect of climate has nothing to do with the handling and production of grain. What effect does it have with respect to the storage of grain? Is a dry, cold climate better for the storage of grain than a warm, humid climate?

Mr. Hughes: Why, certainly.

Mr. Wimbish: Is it not one of the very purposes of concentration and reshipping to private storage so as to prevent the grain being forced on the consuming market when there is no demand for the grain, to hold the grain in storage and let it go out into the consum-

ing territory quickly as the demand calls for it? Do you consider that as one of the chief reasons justifying the concentration points and the reshipping?

Mr. Hughes: One of the chief?

Mr. Wimbish: Yes.

Mr. Hughes: I will concede it is one of the chief.

Mr. Wimbish: Then, if a city is otherwise as well situated for the concentration and for the handling and protection of grain, and is superior in point of climatic conditions tending to the preservation of the grain in storage, would you not say that that point was fully entitled to transit privileges?

Mr. Hughes: Sure. That is the proposition. There cannot be any question.

557 Mr. McConnico: You mean from the standpoint of climate alone?

Mr. Hughes: You know I have eliminated climate from any part of it.

Mr. McConnico: Yes; but on Mr. Wimbush's hypothesis you are saying that from the standpoint also of climate that would be true?

Mr. Hughes: Why, certainly.

Commissioner Clements: One question or two. Mr. Hughes, the grain that comes to or through Nashville for beyond—how is the rate made up? Is it so much to the Ohio River or the Mississippi River and so much beyond?

Mr. Hughes: Yes sir.

Commissioner Clements: You spoke of Thebes as being a point where it leaves the larger river and is put into a boat to go to Nashville?

Mr. Hughes: Judge, down there on the river, for instance, you go down the Cumberland River and the C., B. & Q. and the I. C. and the Big Four—does the Iron Mountain come down this side? Well, anyhow, those points down there could be made all facilities for loading. The closest place, of course, would be the natural place to put up an elevator of that kind. Now, the rate from St.

558 Louis to the Ohio River, or wherever it goes is 2 cents.

Commissioner Clements: St. Louis to the Ohio River?

Mr. Hughes: Yes sir.

Commissioner Clements: What is it from the Ohio River to Nashville?

Mr. Hughes: 10 cents.

Commissioner Clements: From all points?

Mr. Hughes: Wel-, no sir. From Louisville, where it comes from beyond the river, it is 8 cents on account of the shrinkage they have there on the rate, but that does not help us any.

Commissioner Clements: This Nebraska grain and southern Illinois grain, you say you get the bulk of it from there—how does the rate run that you pay? You take a shipment from where you ordinarily get it; how much is the rate and how is it made up?

Mr. Hughes: 90 per cent of it is 17 cents.

Commissioner Clements: To Nashville?

Mr. Hughes: Yes sir.

Commissioner Clements: Then it is what from Nashville to Atlanta, locally?

Mr. Hughes: We figure it from the river again—24; 24 and 7.

559 Commissioner Clements: It is 24 and 7?

Mr. Hughes: That would be 31.

Commissioner Clements: And when you bill it into Nashville and bill it out again to Atlanta, what is the net that you pay; how much less than 31?

Mr. Hughes: Not any less; we just get a through rate guarantee, that is all. In other words, if we bill it into Nashville and we did not bill it out, we would have to pay 3 cents more than we do pay. In other words, on that that we sell locally we lose 3 cents a hundred on.

Commissioner Clements: You pay 10 cents on that?

Mr. Hughes: Yes sir.

Commissioner Clements: And you pay 7 cents on the other?

Mr. Hughes: Yes sir.

Commissioner Clements: Then you ship out at the 17.5 rate—is it 17, or 17.5 cents?

Mr. Hughes: Most of it 17.

Commissioner Clements: To Atlanta?

Mr. Hughes: 24 to Atlanta.

Commissioner Clements: I mean locally. You don't use that at all.

Mr. Hughes: Yes we do; I have shipped lots of that, be-
560 cause it was river stuff.

Commissioner Clements: And is this through business that goes through at a net rate of 31 cents?

Mr. Hughes: Yes sir.

Commissioner Clements: And when it comes to Nashville by rail from any Ohio River point, it is 10 cents except where the 2 cents is shrunk at St. Louis? Is there some place where you pay ten and there is no shrinkage?

Mr. Hughes: Oh, yes. The rate on that grain to Henderson or Evansville is 2 cents. The rate from Henderson or Evansville or Cairo to Nashville is 10 cents. We have nothing whatever to do with an 8-cent bill that comes through Louisville. We don't know how they get it or how it is worked. There are one or two of those points where they pay expense, but it does not make any difference because the through rate is protected just the same.

Commissioner Clements: The published rate is supposed to be 10 cents from Louisville, is it not?

Mr. Hughes: Yes sir.

Mr. Andrews: The local rate you mean?

Mr. Hughes: The local rate.

Commissioner Clements: From Louisville to Nashville. Well, how can any billing into Louisville be availed of on a ship-
561 ment from Louisville to Nashville?

Mr. Hughes: You will have to ask a railroad man.

Commissioner Clements: Do you know that that is done?

Mr. Hughes: Yes sir.

Commissioner Clements: Done now?

Mr. Hughes: Yes sir.

Commissioner Clements: You say when you get this grain in and you sell it locally, you stand the rate of 10 cents?

Mr. Hughes: Yes sir.

Commissioner Clements: And when you send it on, it is done for you at the rate of 7 instead of 10; is that the figure?

Mr. Hughes: Yes sir. That is not our figure. The rate from Nashville to Atlanta is 17 cents. That is the rate at which we bring it in from the farmers down there, or locally, that we ship.

Mr. McConnico: The river grain.

Mr. Hughes: Anything that starts there and is to go beyond. Now, as a matter of fact Louisville has got an 8-cent rate. I do not know how she fixes it, but as a matter of fact the rate from the original point may be 12 cents, so they take that 2 cents off and it figures out on a south-bound rate and makes twelve. It is
562 only 14 cents from Nashville to Atlanta, but we do not figure that way; we figure from the river. It is 24, and we pay 10 in and that leaves 14. In other words, they have been using that money.

Mr. McConnico: You get a refund?

Mr. Hughes: No sir; we do not get any refund at all. It is the other fellow that gets a refund, these railroads that take this money and use it. They make us pay 3 cents more than they ought to, to start with.

Mr. McConnico: Then they take it off the shipment when they send it forward?

Mr. Hughes: Yes sir.

Mr. McConnico: It sums up, then, 10 cents and 14 cents, or 17 cents and 7 cents, either way. It makes the same total?

Mr. Hughes: Yes sir.

Mr. McConnico: Now, when you get that grain and bring it in at the 10-cent rate and sell it at Nashville, you have stood a 10-cent rate and got none of it back and no benefit of it on an outbound shipment?

Mr. Hughes: No, sir.

Mr. McConnico: Why is it that in doing so important a local business there, you will continue to pay 10 cents when you can get it up the river at 6 cents or possibly less——

Mr. Hughes: Well, now——

563 Commissioner Clements: Why does not the river business take that and you patronize it and get the benefit of the six cents instead of standing for ten? There may be a good reason for it, but I am just after light; I want to know why it works out that way.

Mr. Hughes: As a matter of fact, we get all of it that we can and as a matter of fact we would get more if it was not for our friends, the railroads. If we were to get to doing that, they would say, "Here, that won't do, Mr. Hughes." They would not come out in so many words, but they would hint it so strong that you

could not get a car for shipment. You say you are asking for light, and I am giving it to you from my standpoint.

Commissioner Clements: We cannot ever dispose of these matters except on the basis of the truth as given, and that is what we are after.

Mr. Hughes: You recognize that railroads are big corporations, that my little two-by-four corporation isn't one, two three with the railroad. We have got to be subservient in a large measure to the laws that they have laid down and have established by practice, and they have broken every good man that went into the river business. I do not know how they did it, but they bought at
564 a big loss and ran an opposition packet line. I would be tickled to death to get out of the grain business if you could assure me that we could get a 6-cent rate from the elevator to the Ohio River, to Nashville, on grain, and would grind it at half price to get the transportation.

Commissioner Clements: You think 6 cents would be profitable business on the river today?

Mr. Hughes: If you will just stop and figure a minute you will know it. Yes sir. With steel barges a man can carry 10,000 bushels at a trip, and there is no deck hands or anything like that. But you know what the railroads would do if you ever started that.

Mr. Andrews: The railroad would reduce the rate?

Mr. Hughes: Not necessarily. I don't know that they would reduce the rate, because you have got an interstate commerce commission. The trouble about reducing that rate would be the elimination of all that competition. They would go down there and say to John Jones or Bill Jones, "I want a steel barge." They would haul up the river at 2 cents. I would turn up some morning and one of my barges would be in the bottom of the river and nobody would know how it happened.

Mr. Andrews: Mr. Hughes, what were the rates on your
565 grain from the Ohio River when you first went in to business?

Mr. Hughes: Like they always have been.

Mr. Andrews: When you first went into business, how much did you pay on your grain?

Mr. Hughes: That rate has been increased a little.

Mr. Andrews: Did you at any time pay as much as 40 cents?

Mr. Hughes: No; I am not that old.

Mr. Andrews: Has there been no reduction of the charges for carrying the grain from the river to Atlanta since you went into business, by railroad, not by river?

Mr. Hughes: There has been an increase, in my judgment.

Mr. Andrews: What did you say—you have been in business 15 years?

Mr. Hughes: 15 years I have been actively shipping, and in my judgment we have had an increase of about 26 cents.

Mr. Andrews: I am talking about 15 years ago.

Mr. Hughes: I cannot get back that far.

Mr. Andrews: Well, we will leave that for history.

Mr. Hughes: Yes; history will determine that.

Commissioner Clements: You expressed the opinion a moment ago that if the railroads were to take out these transit privileges it would entirely ruin your physical property.

566 Mr. Hughes: Yes sir.

Commissioner Clements: Suppose they did not do that, but extended the same privilege they now give to Nashville to Atlanta or Chattanooga or any other place where facilities are afforded for handling grain in the same way as it is done in Nasville.

Mr. Hughes: If you will let me tell that in my own way, I will give it to you.

Commissioner Clements: Certainly.

Mr. Hughes: We are in business at Nashville, and there are 25 boats, we will say. We will go down and multiply that 25 by 10, that makes 250. You send me a postal card and I send a quotation of a car of corn. There are some of us always have got a car too much. Add that up ten times and you will find 250 people and each one of them has got one that he don't want a little worse than the other fellow. Atlanta and the balance of the folks want the business; but do they get it? They will be awful tired if they get it, because it not only goes from me to you on account of the surplus or overplus—in other words, we are short of money now, you know. When you come down to the inherent part of it, I think every man is entitled to whatever he can get. Now I speak

567 from experience—I really sell more to Atlanta—I have got more friends out there listening, and they will be hopping on me to beat the band. I have got more people to buy from me in Atlanta than anybody else here.

Commissioner Clements: According to the way in which I interpret your answer, it is that it would be distributing this business among so many it would not be of great value to anybody.

Mr. Hughes: That is it exactly. Well, there is a little bit more than that to it, Judge, if you will follow it a little bit further—I mean of the distribution among so many markets, that no one market would ever be in a position to take care of an abnormal amount from a specific territory; in other words, the territory at Atlanta might need the product pretty bad.

Commissioner Clements: You think that in the distribution of it around so many, no one might keep enough at all times, or that each one would not keep enough at all times, to take care of any emergency of that sort that might be liable to arise at a given time?

Mr. Hughes: Yes sir.

Commissioner Clements: Would it have any effect, in your judgment, on the consumer and the facilities with which he is supplied and the terms on which he is supplied, and the ultimate

568 price he pays for the product?

Mr. Hughes: Is that a fair question?

Commissioner Clements: Well, I won't insist on your answering it if you do not think it is.

Mr. Hughes: I might have to hurt some of my Atlanta friends for answer.

Commissioner Clements: Of course it is possibly too much in the

nature of an opinion that you would not care to express, and I shall certainly not insist on your doing it unless you want to.

Mr. Hughes: Thank you, sir.

Commissioner Clements: I do not think there is anything else that occurs to me.

Mr. McConnico: Mr. Hughes, you have been asked with respect to the effect it would have upon business if transit privileges were extended to the other points in the southeastern territory mentioned in this rule to show cause. I want to ask you if transit privileges were withdrawn at Nashville, would Atlanta or any other of the southeastern points be benefited at all?

Mr. Hughes: No, they would get it in the neck too.

569 Mr. McConnico: Would they be deprived of one market of supply, and would not the effect be that they would just have to go beyond Nashville to the necessary link of primary market, that is, the Ohio River gateway, to these river gateways? Could they go in to Atlanta on exactly the same terms as Nashville now goes to Atlanta on?

Mr. Hughes: You have got that too much mixed up; I cannot get onto it.

Mr. McConnico: My proposition is this. I did not ask the question as clearly as I might have. If the re-shipping privileges were withdrawn at Nashville and still maintained at the Ohio River point, state whether or not those Ohio River points could enter Atlanta and this southeastern territory exactly as Nashville does now?

Mr. Hughes: Sure.

Mr. McConnico: And would not the only result be that if these transit privileges were withdrawn at Nashville and kept at the Ohio River points as they are, that that chain of Ohio River points would administer on the Nashville market without benefiting Atlanta and the southeastern points named, at all?

Mr. Hughes: It would be a positive detriment to Atlanta.

Mr. McConnico: Depriving her of one source of competition and supply and the nearest one to her, without benefiting her at all, wouldn't it?

570 Mr. Hughes: Yes sir.

Mr. McConnico: I forgot to ask, Mr. Hughes, with respect to this fact: State whether or not you know that there are numerous large dealers in grain in the northwest and west in the territory in which we buy that refuse and decline to sell any grain for delivery south of Nashville into southeastern territory, and why do they do that?

Mr. Hughes: It is just like this: There is a whole raft of people that figure when they get that far away from home that there is not enough profit in the grain to carry it for that distance, especially in the first year.

Mr. McConnico: State whether or not their declining to sell to markets south of Nashville in any degree is based upon the danger of the grain spoiling if it is shipped farther south than Nashville without being properly treated or conditioned?

Mr. Hughes: Certainly; that is the very reason.

Mr. McConnico: That is one reason why they do not care to accept that risk for the long shipment?

Mr. Hughes: Yes sir.

Mr. McConnico: They regard Nashville as about the dead line or danger line?

Mr. Hughes: Yes sir.

Mr. McConnico: That is all.

571 Mr. Wimbish: How long is this germinating period during the year?

Mr. Hughes: That varies as you come down the country.

Mr. Wimbish: Just take a shipment of corn from Nebraska and send it to Nashville or Atlanta, how many days would that be subject to the danger of germination?

Mr. Hughes: According to the time of the year. You know Omaha is a big assembling market. You ship corn out of Omaha at any time prior to the 15th of March and it all runs to Nashville. The whole trouble with grain is the little particles of dust and dirt in it and it starts practical fermentation—just like that yeast spoken of in the Bible; it keeps going on and on and on. It is owing to the weather; some years it is worse than others. You take a real wet spring, and it will last probably seven weeks in the climate south of the Tennessee line. Now, up north the germinating period is a good deal shorter.

Mr. Wimbish: How long at Nashville?

Mr. Hughes: I should judge our real danger period in the early spring would start a week before Easter and wind up two weeks after Easter.

Mr. Wimbish: About three weeks?

Mr. Hughes: Yes sir.

572 Mr. Wimbish: Do you think that period is longer in Atlanta than in Nashville?

Mr. Hughes: Yes, to a certain extent that is so. Now that kind of question, you know, you cannot answer, because they ramify. You plant corn sooner in Atlanta than you do in Nashville.

Mr. Wimbish: It comes up sooner, too. But the germinating period in Atlanta would not be any longer than the germinating period in Nashville, unless there are climatic reasons?

Mr. Hughes: You have got to raise corn in central Nebraska around 95 days, and you can raise two crops of corn in Central Georgia. Certainly the germinating period is longer. There are a few people who confine their market purely to bulk markets. Nashville is the last bulk market on the route.

Redirect examination:

Mr. McConnico: Do we plant corn from June until November?

Mr. Hughes: From June——

Mr. McConnico: I mean from February——

Mr. Hughes: It commences in March, and we run to the 4th of July.

Mr. McConnico: That is the germinating period in Tennessee?

Mr. Hughes: No; our germinating period commences i
573 Tennessee at a week before Easter and runs about two week
after Easter. That is the hot corn period. We can plant cor
at any season. We have frost quicker than they do down here.

Mr. McConnico: I want to ask you this question: Do you thin
that the Louisville and Nashville or the Nashville, Chattanooga an
St. Louis Railway extend any transit privileges or reshipping privi
leges at Nashville or any other traffic advantages, that they are no
constrained to extend by the competition of the Cumberland River

Mr. Hughes: I should say not.

Mr. McConnico: That is all.

JOHN H. BELL, called as a witness and having been first duly sworn, testified as follows:

Mr. McConnico: Where do you reside?

Mr. Bell: In Nashville.

Mr. McConnico: How long have you resided there?

Mr. Bell: About 28 years.

Mr. McConnico: In what business are you engaged?

Mr. Bell: In the grain business.

Mr. McConnico: How long have you been in that grain business in Nashville?

574 Mr. Bell: About 10 years.

Mr. McConnico: What position do you hold in the Nashville Grain Exchange?

Mr. Bell: I am the vice-president of the Nashville Grain Exchange.

Mr. McConnico: How many members has the Nashville Grain Exchange?

Mr. Bell: About sixty members.

Mr. McConnico: How many of the members are active dealers who ship?

Mr. Bell: About 25 members.

Mr. McConnico: What is the name of your concern at Nashville?

Mr. Bell: The Bell-Duff Commission Company.

Mr. McConnico: How long have you been familiar with the traffic conditions at Nashville with respect to the handling of the grain and with respect to the Cumberland River?

Mr. Bell: About ten years.

Mr. McConnico: Mr. Bell, I will ask you to state with ordinary equipment at this time, at what price the grain could be moved from the Ohio River crossings into Nashville by barges or tows on
575 the Comberland River, if all of the grain coming in to Nashville now and going to the southeast was offered to the boats?

Mr. Bell: I have never done any river business or handled any river corn, but for the purpose of information I have seen the figures made and it has been figured around 6 cents.

Mr. McConnico: Is that a general understanding and knowledge of the trade in Nashville, as to the rate at which it can be brought in with ordinary tows and barges?

Mr Bell: Yes sir.

Mr. McConnico: From these river gateways?

Mr. Bell: Yes sir.

Mr. McConnico: Now, if you had modern appliances of the very best well-known modern appliances on that river, sufficient to handle all that grain and they were to apply well-known methods of economy, I will ask you to state what, in your judgment, that grain could be brought into Nashville for by the Cumberland River from those same river gateways?

Mr. Bell: Well, the computation for that kind of handling is not over 3½ cents, and it seems to be a reasonable figure.

Mr. McConnico: Mr. Bell, if the reshipping privileges at Nashville were withdrawn by the carriers or were stopped, and the sum of the local rate in and out was maintained by the carriers,
576 state what effect that would have on the fixed investments at Nashville in the way of elevators and warehouses which are located exclusively on the rail lines?

Mr. Bell: It would practically destroy the value of the property unless some remedy was provided. That is, outside of the real estate.

Mr. McConnico: The facilities could no longer be used for the purpose for which they were constructed?

Mr. Bell: Not under those conditions.

Mr. McConnico: Under the conditions I put?

Mr. Bell: Yes sir.

Mr. McConnico: And what would become of the grain dealers in Nashville, Mr. Bell, if these reshipping privileges were destroyed at Nashville and the sum of the local rate in and out of Nashville, as now appears in the tariff of the carriers, were continued to be applied?

Mr. Bell: They would either have to go to some other point for handling the grain for their customers in the territory, or they would have to locate on the river bank and provide facilities for handling to the river and from the river to the railroad for doing business in the southeast.

Mr. McConnico: Would that reorganization on the basis of
577 the river not only destroy the value of the fixed improvements now on the railroad lines, but would that also require large expenditures of capital and considerable time to reorganize the business on the river basis?

Mr. Bell: It certainly would.

Mr. McConnico: But after you got it reorganized on the river basis and had incurred loss that was visited on you by losing your investment on the rail line, and stood the expense of reorganizing your business on this river basis, could you then, if the rail lines were to continue to charge the same 17-cent local into southeastern territory—could you then reach it by using the river up to Nashville—this southeastern territory—on a rate partly by river and the remainder by rail lines, as cheaply as 24 cents through rate that is protected at Nashville with the reshipping privilege?

Mr. Bell: After the investment had been made and the facilities for handling and modern facilities were provided and facilities for

transportation on the river, the dealers could undoubtedly handl the business just as they could with the present transit rate priv ileges that we have.

Mr. McConnico: That is, you could bring your grain into Nash ville from these Ohio River gateways by the Cumberland Rive and with proper boats and handling facilities on th
578 river after you made that investment, you could then pa that rate into Nashville that you have to pay the boat line and send it out to the southeast by paying the full 17-cent local, an the whole movement would cost you less than the present through rate that the carriers protect at Nashville while extending thes privileges there?

Mr. Bell: Undoubtedly so.

Mr. McConnico: I will ask you if these transit privileges were withdrawn at Nashville and the present rate in and out of Nash ville were maintained, in your judgment, if the boat lines would enter the Cumberland River to carry that grain into Nashville?

Mr. Bell: Well, I doubt very much whether they would unless they had a guarantee that they could continue the business.

Mr. McConnico: I am asking you in my hypothetical question to assume that these present rates would be maintained by the rail roads.

Mr. Bell: Oh, undoubtedly there would be boat lines under these conditions.

Mr. McConnico: And would they not be very paying invest ments?

Mr. Bell: They certainly would.

Mr. McConnico: I want to ask you, Mr. Bell, with re
579 spect to your knowledge of how grain becomes damaged by heating or by germinating on long hauls, where it is con fined in bulk and where it is shipped from a colder climate into one that is warmer. Does that occur frequently?

Mr. Bell: It does in the germinating season and the longer time it is contained in the cars the more danger there is of the grain getting out of condition.

Mr. McConnico: I want to ask you with respect to your views as to Nashville being a place that is better suited to handling grain for the purpose of marketing it in transit than from the Ohio River gateways on the north or Atlanta and the southeastern points named on the south. Explain the relative merits and demerits of those points as rehandling points to condition the grain.

Mr. Bell: Well, Nashville being centrally located on the line of transportation is undoubtedly an ideal place for such handling. The climatic conditions, that is, changes in temperature, are posi tively no greater at Nashville at times than they are between the western country and Atlanta; but the time of the haul, the trans portation, is greater to Atlanta and, consequently—when I say At lanta, I mean all the points that are in question to the south
580 eastern territory—consequently there is more danger of the corn getting out of condition. Now, if corn is loaded in a cold climate—and it is usually so loaded—during the reason that

most of the corn moves, it always containes a certain amount of moisture. There is not any corn shipped that does not contain as much as 14 per cent, we will say, of moisture—from 14 to 20 per cent; but in the northwestern country, where they have cold weather, it is practically in a frozen condition; that is, it does not show in the corn; but as it moves south the temperature is higher and this moisture melts to a certain extent and a dampness forms and if not taken in time germination begins, especially as one of the witnesses has said, where there is a little must accumulates in spots in the car. If that is taken in time before the corn begins to get hot, when the must begins to show moisture and a little warmth, the corn can be handled without extreme expense of elevating it and airing it and getting it to the temperature of the market for its handling. Then it is practically the same temperature, or it will be to the end of its journey and on corn handled in such a manner there is very little risk in shipping.

Mr. McConnico: I want to ask you to state whether or not this is true: Corn coming from the grain producing territory
581 in which you handle grain, and the grain comes there that is handled in Nashville, and coming up to these river crossing towns, by the time it gets there might it not apparently need no treatment at all; that some corn by the time it goes over the haul to Nashville and has been for that length of time in the car, it will plainly show that it needs some prompt treatment; that prompt treatment at that point can save the corn; and that the same corn, if not treated there, will be completely spoiled by the time it would reach Atlanta and these southeastern points. Is that sound and correct?

Mr. Bell: That is undoubtedly so in a great many instances.

Mr. McConnico: Now, because of the fact that Nashville is favorably located for the rehandling of that corn to protect it in transit, I will ask you to state whether or not large handling facilities in the way of drying plants have been established at Nashville for many years.

Mr. Bell: They have.

Mr. Connico: Do you know of any such drying facilities that are in the territory south or southeast of Nashville?

Mr. Bell: I do not.

Mr. McConnico: Up until three or four years ago were there any such drying facilities at any of these river crossings?

Mr. Bell: I understand there were not; there were not to
582 my knowledge.

Mr. McConnico: Is it not the understanding of the trade, and your understanding, that there are only those drying facilities now at two or three of the crossings?

Mr. Bell: I think at two Ohio River crossings, and also at St. Louis to a limited extent. I think there is one drier in St. Louis.

Mr. McConnico: That has been recently erected?

Mr. Bell: In the last two years.

Mr. McConnico: How many have they at Nashville?

Mr. Bell: They have three at Nashville.

Mr. McConnico: Do you know their capacity?
Mr. Bell: Wel-, I think about 35 or 40,000 bushels.
Mr. McConnico: Per day?
Mr. Bell: Per day.
Mr. McConnico: You have described what would be the effect upon the Nashville dealers if these reshipping privileges were withdrawn there. I want to ask you if those privileges were withdrawn at Nashville, whether that would affect Atlanta.
Mr. Bell: It would not, absolutely.
Mr. McConnico: Do they have reshipping at these Ohio River and Mississippi River crossings?
Mr. Bell: Yes sir.
583 Mr. McConnico: Would those markets be afraid to enter Atlanta and her territory, just as Nashville does now?
Mr. Bell: Just as they have the privilege of doing.
Mr. McConnico: Just as who have the privilege?
Mr. Bell: The Ohio River crossings.
Mr. McConnico: Then, I will ask you if withdrawing these transit privileges at Nashville while they were maintained at these Ohio River gateways, would have any effect except to destroy the Nashville market and distribute its business among those Ohio River gateway markets?
Mr. Bell: Well, in destroying it it would have that effect, and in destroying the Nashville market it would give the southeastern dealers one less market of competition and would probably cost them considerable money, in that they would not have as much competition in selling as they have now.
Mr. McConnico: And would it not also deprive the people of the southeast and the carriers and the grain dealers of the country of the advantages that accrue at Nashville owing to its favorable location with respect to the handling of grain to protect the grain itself, in transit?
Mr. Bell: It undoubtedly would.
Mr. McConnico: I will ask you, Mr. Bell, whether or not
584 there are numerous large dealers in this northwestern country that the Nashville market draws its grain from and that goes on into the southeast, that refuse and decline to sell any grain for delivery south of Nashville?
Mr. Bell: I know that there are such dealers that refuse to sell south of Nashville at certain periods of the year.
Mr. McConnico: That is what I aimed at. Now, why is that.
Mr. Bell: It is because of the greater risk to them in shipping farther south than Nashville. The margin is so close in the handling of the grain that they do not feel they can afford to take the risk of shipping farther than Nashville for the profit that they get out of the business.
Mr. McConnico: They would not want to ship any farther than Nashville, to some other point farther on south where the grain would have to go without being rehandled and conditioned if necessary?
Mr. Bell: Yes sir.

Mr. McConnico: Is that what the greater risk consists of—the liability of the grain becoming damaged before arriving at destination?

Mr. Bell: That is the whole extent of the risk, as I understand it.

Mr. McConnico: That is the controlling thing with them
585 in refusing to make deliveries to points that are farther south, as Nashville?

Mr. Bell: Yes sir.

Mr. McConnico: They regard Nashville as the danger line for through shipment?

Mr. Bell: Yes sir.

Commissioner Clements: Now, on that point, if you will excuse me. Suppose that the transit privilege that exists and has existed at Nashville had been established and permitted at Chattanooga at the same time and to the same extent all these years, and the grain business had grown up there and that, according to the progress of commercial forces these improved facilities, drying machines and things of that kind, the field being large enough to justify it, they had established something of that sort there also. Would not that move the danger line down to Chattanooga, practically?

Mr. Bell: Well, it would—I do not think it would. It would make it less dangerous, because there would be facilities for saving the corn there.

Commissioner Clements: My idea in the question is, that if the volume of business is big enough, the cleaner and the drier
586 and all these things will attach themselves to the place.

Mr. Bell: Oh, undoubtedly so.

Commissioner Clements: They won't go there until the business is there.

Mr. Bell: No.

Commissioner Clements: And if the transit privilege is confined to one place and denied to others, then the business will not go there. Those are the suggestions that are running in my mind on this particular phase of the case, that I would like to have you speak of frankly and fully from your point of view.

Mr. Bell: That is the rule of business throughout the world, that necessity creates the facilities. It is the case in the railroad business, and is what occasions reshipping at Nashville. The Lord, as one of the witnesses has stated, put the cause there in the Cumberland River. Now, if the same facilities—if there had been cause for the same facilities to have been established at Chattanooga or Atlanta or Rome, they would undoubtedly have been there, and the facilities for handling would have been there. Still, that does not make those as safe points for shipping from the west as is Nashville, because it takes a longer haul and the grain is confined in the cars for a longer
587 time. Now whether that would cause enough risk to keep those shippers from working and selling in that territory I cannot say. It would undoubtedly minimize the risk as compared with what they have now.

Mr. McConnico: Chattanooga is 151 miles south of Nashville?

Mr. Bell: Yes sir.

Mr. McConnico: Would you regard Chattanooga as being as favorably situated as Nashville for the purpose of handling the grain, to protect it in transit?

Mr. Bell: I would not.

Mr. McConnico: Do you understand that by extending the transit privileges at Nashville the carriers have given Nashville anything or any artificial advantage?

Mr. Bell: Certainly not.

Mr. McConnico: Do you understand that they have extended those transit privileges at Nashville because they are constrained to do so by competitive conditions and have extended them at Nashville, not to benefit Nashville but to protect themselves?

Mr. Bell: Undoubtedly so—undoubtedly to protect themselves.

Mr. McConnico: Can you think of any reason, either business or sentimental, that would have prompted the Louisville &
588 Nashville and the Nashville, Chattanooga and St. Louis to have extended those transit privileges if they did not have to?

Mr. Bell: No reason whatever.

Mr. McConnico: I will ask you, Mr. Bell, if you have compiled statistics with respect to the value of the improvements and warehouses and elevators and mills at Nashville, or volume of business done at Nashville, and the sacking facilities at Nashville?

Mr. Bell: I have.

Mr. McConnico: I hand you this statement and will ask you if that is the compilation that you have made?

Mr. Bell: It is.

Mr. McConnico: Is that compilation accurate and correct?

Mr. Bell: It is.

Mr. McConnico: I will ask you to file it as exhibit No. 1 to your testimony.

Mr. Bell: I will do so.

(The statement referred to was received in evidence and marked "Exhibit No. 1, Mr. Bell.")

Mr. McConnico: Now, what does that last exhibit, that compilation, show with respect to the amount of money invested at Nashville in warehouses, elevators and so forth?

Mr. Bell: It shows $1,566,000 invested in warehouses, elevators and so forth.

589 Mr. McConnico: Does this compilation itemize that statement and show how much is invested in each elevator and warehouse?

Mr. Bell: It does.

Mr. McConnico: I will ask you what that same compilation shows with respect to the capacity in bushels of those handling facilities?

Mr. Bell: The storage capacity of the elevators shown on the statement are 3,632,500 bushels. The sacking facilities for the same houses are 252 000 bushels per day.

Mr. McConnico: What does that compilation show with respect to the volume of business for the year 1909 done at Nashville, first in bushels and then in dollars?

Mr. Bell: It shows 36,915,000 bushels. The volume of business in dollars and cents is $23,038,012.63.

Mr. McConnico: Is that for the year 1909?

Mr. Bell: That is for the year 1909.

Mr. McConnico: I will ask you if at the same time you compiled a statement with respect to the mills in Nashville?

Mr. Bell: I did.

Mr. McConnico: I will ask you if the statement I now hand you (handing paper to witness) is that statement and if that statement is correct.

590 Mr. Bell: It is, and it is correct with one exception: I have on this statement the capacity per day of the Liberty Mills as 4,000 barrels. That was given to me by the office of the Liberty Mills, but that was evidently the barrels of flour. Now, Mr. Kelly, the president of the Liberty Mills, stated that their capacity was 5,500, I believe it was, or something in that neighborhood. That would be barrels of flour and meal.

Mr. McConnico: I will ask you then, making that correction, what your statement will show as the capacity per day for flour in barrels of the mills at Nashville?

Mr. Bell: The capacity of flour in barrels would be 5,500 barrels. That includes a thousand barrels for the Ford Flour Company, who do not grind wheat but blend flour. They ship self raising flour and are included in this as they are reshippers of flour.

Mr. McConnico: I will ask you what that compilation shows with respect to the average business in bushels, done by the Nashville mills, including this company that only blends flour.

Mr. Bell: The average business per annum in bushels would be 4,837,500 bushels.

Mr. McConnico: I want to ask in respect to what that compilation shows as to the capital invested by those mills; first in elevators and warehouses used in connection with their mills, and second, in the mills proper.

591 Mr. Bell: It shows $291,000 invested in elevators and warehouses; $508,000 invested in mills proper.

Mr. McConnico: What does that same compilation show with respect to the volume of business done by those mills for the year 1909, in dollars?

Mr. Bell: Excluding the Nashvile Roller Mills, which was not in business in 1909, the volume of business is $5,935,000.

Mr. McConnico: I will ask you to file that last statement, it being the compilation with respect to the mills in Nashville, as Exhibit No. 2 to your testimony.

(The statement referred to was received in evidence and marked "Exhibit No. 2, Mr. Bell.")

Cross-examination:

Mr. Wimbish: According to your exhibit relating to the amounts invested in warehouses and elevators and so forth, I notice that the Hermitage Elevator is credited with $500,000 as the amount in-

vested. You do not run out the figures showing the volume of business for the year. Is that because that elevator was idle during that time?

592 Mr. Bell: No sir; that was because this elevator and the amount of business is included in the amount shown as handled by the dealers. The public elevator only handles for the dealers, and in order not to count it twice we did not compute the amount that any public elevator handles. You will notice the same thing with the Central Elevator, which is largely composed of the amount handled by the Hughes Elevator Company. And then the other outside customers. The National Warehouse & Elevator Company also show the same thing, and the Steel Elevator and Storage Company. They are public houses.

Mr. Wimbish: Yes; I understand. Now, what do you know, of your own knowledge, about dealers in the northwest declining to sell at certain seasons of the year, grain south of Nashville?

Mr. Bell: I have the word of dealers in St. Louis who have stated to me on the floor of the Merchants' Exchange in St. Louis, that they would not offer or sell south of Nashville during the germinating season and they included in that the first year until the summer months, the late summer months.

Mr. Wimbish: They meant that they would not sell delivered; they would sell f. o. b. St. Louis, wouldn't they?

Mr. Bell: Well, if the parties they sold to would send them a New York Exchange or any remittance that could be con-

593 verted to their credit in the banks at St. Louis, they would undoubtedly ship anywhere.

Mr. Wimbish: Now, that applies only to corn?

Mr. Bell: I should not think it would apply to any other grain than corn, but corn was the principal movement of grain into the southeast and the spring months are the principal months of handling, that is, January, February, March, April and May.

Mr. Wimbish: They would not hesitate to sell delivered, except during the germinating period, for shipments that might extend over into the germinating period?

Mr. Bell: I think that might be reasonably correct, although I could not say that all firms would do that.

Mr. Wimbish: Well, if there were driers and other facilities in Chattanooga and Atlanta, would they not sell to other points?

Mr. Bell: I do not know whether they would or not. As I stated awhile ago to Judge Clements' question—perhaps you were not in here—that would largely minimize the risk of shipping to those points, but it would not make it as safe as to ship to Nashville, because of the additional time that the grain would have to be confined in the cars to reach those points.

594 Mr. Wimbish: Then your conclusion is that as to that movement of grain during that period of the year, Nashville has such an advantage in view of its situation that it would retain that business even if these transit privileges were extended south. Is not that true?

Mr. Bell: I think we would retain our business largely. Of

course every business man wants to have as little competition as he can, but there is no business man that should object to lawful competition, and we certainly do not.

Mr. Wimbish: Then, you would have no objection to extending these privileges to Chattanooga and Atlanta and Rome and other points?

Mr. Bell: We certainly would not have any objections, but would go to any trouble or expense to try to meet it. Now, as I said, we want to have as little competition as possible, like every business man, and we would not object to any lawful competition; and I want to say that the reason we are here today is not to say that we do not want Atlanta to enter the southeastern territory to have anything that they can get from the railroads, but we are convinced that if the order in the Duncan Case should be put into effect the railroads could comply with that order by taking outward shipping at
595 Nashville which would be equal to confiscation of all our improvements and property there for the handling of grain, and that makes us largely interested. It would be utterly impracticable for them to grant reshipping privileges to Atlanta, to Columbus, to Macon, to Cordele, to Valdosta to Albany and to Augusta, because of the basis, the fabrication, of freight rates throughout the southeastern territory which have been brought about by usage and utility and the position of the competition on each side. Now, of course it is for them to tell you, but that is the reason why we are here, Mr. Wimbish.

Mr. Wimbish: Then, I understand you do not object to Nashville—the grain dealers do not object.

Mr. Bell: We do not object; but do not get it into your mind that we are courting competition. Certainly we do not object to any lawful competition.

Mr. Wimbish: It would of course increase the competition, provided these transit privileges were used by these cities. If they could not be profitably used, even though extended, why of course those cities would not exercise the privileges and Nashville would not be affected. If they are used, and survive, then it is because they showed themselves entitled to the privileges and exercised
596 them. Now let us get to the other proposition. You say you fear that the privilege will be withdrawn from Nashville by the roads. If the Cumberland River should force that situation at Nashville and if the Cumberland River is in better condition for navigation today than it was at the time these privileges were here, how could the railroads afford——

Mr. Bell: Simply by taking it out of their tariffs.

Mr. Wimbish: Then your recourse would be to ship by the river.

Mr. Bell: After our property had been made useless and our opportunity for selling had been stopped we could possibly get enough capital together to go to the river and build warehouses and elevators and facilities for handling, and get boat lines on the river to handle the business, but this property of ours which represents nearly a million and three-quarters, and which we are using now very conveniently, would be junk except for the real estate.

Mr. Wimbish: Let us go a little further. Do you think you could bring grain down from the fields of production to Nashville by boat feasibly?

Mr. Bell: Did you say peaceably?

Mr. Wimbish: Feasibly.

Mr. Bell: I thought maybe—we certainly could.

597 Mr. Wimbish: Answer my question. Do you think it could be brought from the Ohio River to Nashville for 3 cents a bushel?

Mr. Bell: I think it could be brought for less than 3 cents a bushel.

Mr. Wimbish: Very well. If it were brought at 3, then you could bring grain from the Ohio River to Nashville and reship it, not on a transit privilege but on a local rate, and put it in to Atlanta for 20 cents?

Mr. Bell: Yes sir.

Mr. Wimbish: That would have the effect of making Nashville a rate breaking point. The Nashville combination would be lower than the through rate. Hence Nashville would then be a real gateway to the south and a natural rate breaking point.

Mr. Bell: I do not understand that a rail and water rate makes a rate breaking point. That rate could——

Mr. Wimbish: No; but I mean this. If you could bring in that grain feasibly by river and get it into Nashville from the Ohio River at 3 cents, then you could ship via the river to Nashville and then on the local rate to Atlanta at less than the through rate. That would naturally make Nashville the combination point and you would not need any rebilling or any reconsigning or any transit privilege, because you would have been then a natural rate

598 breaking point, like Louisville and Cincinnati and these other points that are recognized as creating these conditions?

Mr. Bell: We are so situated now, Mr. Wimbish.

Mr. Wimbish: But you do not get it now.

Mr. Bell: I beg your pardon; I have been sitting up with it for about two years. However, Mr. Wimbish, if we have the assurance that the railroads would hold the established rate that they have now from Ohio River points, their basis of rates that makes a reduction of a half cent at Memphis, at Louisville, at Evansville, at Cincinnati, through the C. & O. points and through the Frisco—if we could be assured that that basis of freight rates would stand just like it is, we could get a million dollars tomorrow to build the facilities on the river banks and barge lines to bring that stuff into Nashville at 3 cents, or whatever it costs, and the corporation that put that money in there would be the richest concern that I know of anywhere.

Mr. Wimbish: I am very glad to hear that, Mr. Bell. If you got that grain into Nashville at 3 cents and shipped into Atlanta on the local of 17 cents, then Atlanta would be able to buy her grain at Nashville at 4 cents a hundred pounds cheaper than she does now. It would benefit all the southeastern territory?

599 Mr. Bell: Yes, until the railroads——

Mr. Wimbish: But we have an Interstate Commerce Com-

mission that will not permit the roads to charge more than a reasonable rate.

Mr. Bell: Or permit them to put in a rate from Nashville that will put all of the Ohio River gateways out of business?

Mr. Wimbish: I do not know about that. The point I want to get at is this: You say God made Cumberland River. Do you think he made it only to benefit Nashville, or for the benefit of the country at large?

Mr. Bell: He made it for the benefit of every mile from the source of the river to where it flows into the Ohio River.

Mr. Wimbish: But, don't you think that all parts of the country should benefit by the Cumberland River?

Mr. Bell: I certainly think that if anybody can get any benefit from a natural condition he ought to have it.

Mr. Wimbish: But is it not true that in the improvement of the Cumberland River that the city of Atlanta has contributed more money than the city of Nashville?

Mr. Bell: I do not know anything about the matter of raising money for improving the river. I know that Atlanta is a larger city, so I could not answer that any further.

Commissioner Clements: You are not ready to admit that?

600 Mr. Bell: That is an argument that is made on the refinement of ethics and economics that is somewhat out of line from the other conditions differentiating those points from other points.

Commissioner Clements: On that line, you express the opinion—at least I gather it from what you said, Mr. Bell—that as Mr. Stahlman said, the business was there as well as the river, before the railroads were built there. If the business was there on the river and Nashville was getting it by the river at that time, and it can be done at 3 cents at a profit to whoever does it, what is there in the condition that causes the business at Nashville to submit to paying 10 cents instead of three to get this business in there?

Mr. Bell: At the beginning, when the transit rates were first put in, the river was not improved as much as it is now and the season of boat traffic was not as long as it is now or as long as it will be in a few years from now. But the railroads in addition to giving reshipping at Nashville for controlling this business, have not controlled the boat lines. That is, there are certain landings that the boats will take to Nashville and certain landings, as I understand it, that they take to Henderson and Evansville. Then, the convenience of handling is worth something, as was explained by one of

601 the witnesses, that it cost drayage from the river. The cost of handling in sacks is a little greater. All those things are in favor of the railroad and the volume of business is so great that the facilities that we have here are utterly unable to take care of it. Of course the river is there and the facilities could be created all right; but there is a considerable amount of business that comes in and is used for local consumption on the river, as I understand.

Commissioner Clements: It was in my mind, as Mr. Stahlman was talking and as the various witnesses have been examined, that

the river was there before the railroad came into the situation, what was there in that situation that caused the people to locate their plants away from the river on a basis of paying two or three times as much as was necessary to bring it from the river.

Mr. Bell: Well, it was not quite that much difference. We have figgured it out, theoretically. It has never been tried, but we have taken it to be true that by getting the proper modern facilities for the handling of the stuff on steel barges or gasoline or steam tug boats—but the cost of handling on tug boats without the facilities is greater than that. It has been figured out that it can be done for 6 cents. They charge a little more for handlings where
602 they have to go across the river, back and forth to pick it up. I suppose they charge 7 or 8 cents. Add that to the inconvenience and the cost of drayage and the extra cost of handling, it makes it very nearly the same as the rail rate, for the local business.

Mr. Wimbish: I have no further questions.

Mr. McConnico: Mr. Bell, you have said that you did not want Atlanta to be deprived of any advantages to which she is entitled. Are there any other points named in the southeast that while as a business man you do not want to have any more competition than you have to have, you want it to be fair? In other words, is it true that Nashville has some advantages that are accruing to it as the result of natural causes upon the faith of which you and the other grain men of Nashville have invested your capital? Do you want those natural advantages that you have acted upon by artificial means taken from you or equal advantages artificially given to Atlanta to the destruction of your business?

Mr. Bell: I do not think it would be fair to us to expect us to be willing to have anything of that kind done.

Mr. McConnico: I will ask you, Mr. Bell, whether or not the transit privileges at Nashville have been given and accorded there by the carriers because they were constrained to do so by
603 controlling circumstances of competition, or were those advantages extended to Nashville in order to get business from Nashville that it did not theretofore have, or to artificially aid Nashville?

Mr. Bell: Undoubtedly, to meet competition.

Mr. McConnico: In other words, those carriers gave those privileges to Nashville to protect themselves and not to help Nashville?

Mr. Bell: Undoubtedly so.

Mr. McConnico: That is all.

Mr. McConnico: I want Mr. Anderson to take the stand just a moment.

O. P. Anderson, called as a witness and having been first duly sworn, testified as follows:

Mr. McConnico: Your name is O. P. Anderson?

Mr. Anderson: Yes sir.

Mr. McConnico: I want to ask you, Mr. Anderson, if you have

made a copy of quotations from a little history of the Nashville market entitled "Nashville and her trade for 1870" in grain and flour, at our instance, in this case.

604 Mr. Anderson: I made such an extract and the extract is correct.

Mr. McConnico: I will ask you if you have also, at our instance, made an extract from the annual report of the Merchants' Exchange at Nashville for the year 1881, page 18.

Mr. Anderson: Yes sir; I have seen that book in the Carnegie Library at Nashville, and the extracts made from it are correct as compiled.

Mr. McConnico: Have you made also certain extracts from United States Census Reports in respect to the production of grain in this country at different periods of time?

Mr. Anderson: I made such an extract from the United States Census report for the year 1900 for the purpose of ascertaining the production of grain, and the salient features thrown out by that computation is that the center of grain production is in the Wabash Valley, and the center of wheat production was in the State of Illinois, near Springfield.

Commissioner Clements: What year was that?

Mr. Anderson: 1870. The center of corn production was in the Wabash Valley and the center of wheat production was 18 miles from Springfield, Illinois, and the Illinois territory was served

605 by the Illinois Central Railroad as far south of Cairo where it is put on boats.

Commissioner Clements: What was your first publication, the first one referred to; what was that from?

Mr. Anderson: "Nashville and her Trade for 1870."

Commissioner Clements: Who was that issued by?

Mr. Anderson: It is published by a gentleman named Robert.

Commissioner Clements: Is it an annual, a monthly, or a semi-annual publication; what is the nature of it.

Mr. Anderson: It was a pamphlet, Judge Clements, published in the interests of Nashville, and is preserved in the records of the Carnegie Library in what they call the Tennessee Annex.

Commissioner Clements: Wat it published at stated times like a magazine, or newspaper, or was it just compiled at one time?

Mr. Anderson: Compiled at one time, as far as I am aware. There were no additional copies of it.

Mr. McConnico: I will ask you, Mr. Anderson, if you have also made some extracts from Poor's Manual as to when certain lines of railroad were completed?

Mr. Anderson: I have made such extracts from Poor's Manual of various dates and file the same with my testimony, and the extracts have been correctly stated. The purpose is to show

606 that there were no through rail lines from Ohio River points to the southeast and that the Cumberland River handled a large amount of it owing to the absence of rail lines, bridges and the difference in gauges north and south of the river.

Mr. McConnico: I will ask you if you have filed those four lists of extracts as Exhibit No. 1 to your testimony?

Mr. Anderson: I do file such extracts as Exhibit No. 1, but I also request that they be incorporated into the record.

Mr. McConnico: Have that made Exhibits Nos. 1, 2, 3 and 4, Mr. Stenographer.

Mr. Andrews: I will suggest that these be not copied into the record.

Commissioner Clements: If you have got a sufficient number of them to supply the different parties.

Mr. Anderson: We only have two copies of it, and I will ask to have it incorporated into the record.

Commissioner Clements: Of course you will understand that every page costs the parties and the Government, and it is not our custom to put into the record long exhibits. It is the custom to supply the parties.

Mr. McConnico: It is only four pages.

Commissioner Clements: All right.

607 (The papers referred to were received in evidence and marked respectively Exhibits Nos. 1, 2, 3 and 4, to Mr. Anderson's testimony, and are in the words and figures following:)

EXHIBIT No. 1.

Extract from Nashville and Her Trade for 1870

Grain and Flour.

The following statement of the business for 1869, at selling figures, it will be seen is of no little importance:

Corn	1,000,000 bushels	$1,000,000
Wheat	500,000 "	660,000
Oats	400,000 "	200,000
Barley	100,000 "	125,000
Rye	50,000 "	55,000
Flour	250,000 barrels	1,500,000
Meal	50,000 "	200,000
Hay	10,000 bales	40,000
Total		$3,780,000

The manifold advantages of Nashville as a market, both for exportation and importation, are obvious. She is nearer to the southern or consuming market, by several hundred miles, than any
608 other wholesale point, and extra freight is saved on that account. The bulk of the grain sold in this market is produced in this vicinity. As good prices are given producers and as cheap bargains to consumers as may be obtained in any western market. These are facts that speak in eloquent terms of her superiority. The

quality of Tennessee grain needs no encomium at our hands, her wheat especially commanding higher figures than any other grades, from New York to Texas, and our millers claim for it rising and baking qualities unsurpassed by the flours of any other State of the Union.

Nashville and Her Trade for 1870, p. 119, by Chas. E. Robert.

The greater portion of the cereals finding market at this place is drawn from Middle and East Tennessee, and from that section of Kentucky lying south of Green River and extending as far west as the counties that border on the Ohio. Probably a more fertile and productive stretch of country does not exist on the face of the earth; and when we contemplate that as yet it has been hardly put to the test, and that the greater portion of its crops is destined to find a market at Nashville, this being their grand natural outlet, the view is exceedingly delightful. The storage capacity of Nashville warehouses will amount to several million bushels, and their character for safety, both from fire and natural elements, bears favorable comparison to the finest entrepots of the world, save those employing regular elevators.

Being also in close proximity to the grain producing Wabash Valley, the facilities for exportation at Nashville even surpass those of more northerly markets, and when our railroads refuse shipments of corn and flour from St. Louis to Charleston at the same rates as from Nashville to Charleston, the advantage of the latter point will be greatly enhanced. Nashville flour and meal already finds quick sales in the cities of the Atlantic Seaboard and in those bordering on the Gulf of Mexico, as well as in almost every market of the interior of the south. Comparing the condition of the present with the not overly distant past, we can but admire the enterprise exhibited by our grain and flour merchants, and congratulate them upon their decided success in not only supplying this section from local fields and local manufactories, but in heading off the merchants who formerly went in quest of such commodities to the markets of St. Louis, Louisville or Cincinnati.

Nashville and Her Trade for 1870, pp. 120, 121, by Chas. S. Robert.

EXHIBIT ANDERSON No. 2.

Extract from Annual Report of Merchants' Exchange for the Year 1881, p. 18.

The increasing capacity of our mills has necessarily rendered this an important wheat market. The amount handled here the past season by far exceeds that of any former one; and the completion of the new elevator and the large warehouses nearby give ample room for the storing of a large amount of wheat and of keeping it in perfect condition.

The amount received here during the year was:

	Bushels.
By railroad	923,000
From lower Cumberland	715,000
From upper Cumberland	135,000
By wagon	277,000
Making a total of	2,050,000
Valued at	$2,408,750

Corn and Oats.

The grain trade of Nashville has very materially increased in the last few years, and is mainly shipped to Georgia, Alabama, Florida and South Carolina.

611 The amount of corn received was:

	Bushels.
By railroad	1,561,076
From lower Cumberland	1,000,000
From upper Cumberland	300,000
By wagon	225,000
Making a total of	3,026,076
Valued at	$1,906,427.88

The amount of oats received was:

	Bushels.
By railroad	291,764
From lower Cumberland	75,000
From upper Cumberland	25,000
By wagon	15,000
Making a total of	406,764
Valued at	$199,314.36

612 EXHIBIT ANDERSON No. 3.

Extracts from U. S. Census Reports.

In 1870, Illinois ranked first in the production of both corn and wheat. In that year it produced 129,921,395 bushels of corn and 30,128,405 bushels of wheat. It still ranks first in the production of corn, and in 1900 produced 398,149,140 bushels. Its production of wheat in 1900 was 19,795,500 bushels.

In 1870, Indiana produced 51,094,538 bushels of corn and 27,747,222 bushels of wheat. In 1900, it produced 178,967,070 bushels of corn, and 34,986,280 bushels of wheat.

In 1870, Missouri ranked fourth in the production of corn, her production being 66,034,075 bushels. In 1900, her production of corn was 208,844,870 bushels. In 1870 she produced 14,315,926 bushels of wheat; in 1900, 23,072,768.

In 1870, Kentucky produced 50,091,006 bushels of corn; in 1900, 73,974,220 bushels. Her wheat production did not give her high rank, in either 1870 or 1900.

In 1870, Tennessee produced 41,343,614 bushels of corn; in 1900, 67,307,390 bushels. Her wheat production in 1870 was 6,188,916 bushels, and in 1900, 11,924,010.

In 1870, Kansas ranked 13th in corn production and 18th
613 as to wheat.

The Census shows that the center of corn production in the United States in 1870 was 90 miles southwest of Indianapolis. This would bring it practically to the valley of the Wabash River. It shows that the center of wheat production was 82 miles northeast of Springfield, Ills.

U. S. Census, 1900, Vol. VI, pp. 24, 32.

EXHIBIT ANDERSON No. 4.

Extracts from Poor's Manuals.

The line of the present Illinois Central Railroad south of Cairo was not completed to Cairo until 1873.

Poor's Manual 1880, p. 565.

The main line of the Mobile & Ohio from Mobile to Columbus, Ky., was opened in April, 1861, and was extended from Columbus to East Cairo, a distance of 21 miles, twenty years later, viz., in 1881.

Poor's Manual, 1892, p. 375.

As late as 1879, the Illinois Central Railroad was operating a transfer boat at Cairo to connect its northern line with its southern line.

Poor's Manual, 1879, p. 740.

614 The gauge of the Illinois Central Railroad north of Cairo was then 4 ft. 8½ in., while the gauge of what is now its southern line was 5 feet.

Poor's Manual 1879, p. 740, 563.

The gauge of the present line of the Louisville & Nashville Railroad from East St. Louis to Evansville was originally 4 ft. 9 in., while the gauge of its present line from Henderson to Nashville was 5 feet; and the bridge at Evansville was not completed until 1885.

Poor's Manual 1879, p. 758.

Poor's Manual 1895, p. 528.

Commissioner Clements: You state that Nashville was the natural and only gateway from the grain producing territory to the southeast. Up to what time does your statement show that that was the? There are other gateways now, of course.

Mr. Anderson: That statement shows that in 1870 that was the condition.

Commissioner Clements: In 1870?

Mr. Anderson: That statement is not complete in itself; it is supplemented by the testimony of at least half a dozen river
615 men that that condition continued only on down to 1878. It will be supplemented. The statement itself is correct.

Commissioner Clements: Now, what do you mean by gateways—that that was the only way a car could move through? You spoke of barges and different widths of railroad gauges.

Mr. Anderson: I mean that the Cumberland River was within the path of least resistence down which this traffic flowed to Nashville, and that the Nashville railroad was there about 1854, had been constructed to the southeast. The traffic would come down the Cumberland River to Nashville and be shipped to the southeast.

Commissioner Clements: Have you gone into the question of what was the practice in those days of using the water ways? We have heard a good deal of them, you know, in other cases. Were they not used a great deal in those days for transportation of grain as well as other products?

Mr. Anderson: The Mississippi River was; the other rivers flowed in the wrong direction.

Mr. Pitts: I understand that is the statement that you file, reports of the conditions at the time.

Commissioner Clements: In the Troy Case, the Alabama Midland Case, there was a great deal of stress laid upon the Alabama
616 River up to Montgomery, and in the Social Circle Case there was great stress laid upon the transportation through Savannah up to Augusta on the Savannah River, and so on. I was just inquiring whether or not you had looked up as to the volume of traffic moving in those days to see whether or not those water ways were not open and used to a great extent at that time.

Mr. Anderson: No sir, I do not.

Mr. Pitts: I understand that the paper simply shows what the Census Reports and what Poor's Manuals show as to the conditions at that date, as to the movement and its production and what was the grain center of the United States. He has no personal knowledge, of course.

Commissioner Clements: No, of course.

Mr. McConnico: I will state to your Honor that along with the answers to this case which we have filed in our rule to show cause, we have filed as exhibits some ten or eleven, or perhaps twelve affidavits and Mr. Wimbish has stated that he has no objection to those affidavits; that is, he has told me that. I will not stop at this time to read those, but will regard them as being in the record for the use of each side. I have no more witnesses orally, but I
617 have some statements in the affidavits.

Commissioner Clements: What is the general character and nature of the statements in the affidavits?

Mr. Baxter: That can be explained much better after one witness has testified.

T. M. GALLAGHER, called as a witness for the defendants, having been first duly sworn, testified as follows:

Mr. Baxter: Captain Gallagher, you gave your testimony at the former hearing in this case, did you not?

Mr. Gallagher: Yes sir.

Mr. Baxter: What is your business, Captain?

Mr. Gallagher: I am the director of the Cumberland River Steamboat Company and practically the traffic manager or the freight rate maker—I make rates for the Cumberland River Steamboat Company.

Mr. Baxter: How long have you been engaged in the transportation business and in what capacities have you served?

Mr. Gallagher: Since 1869. I am 54 years of age. At 13 years of age I commenced as office boy; at 15 years of age I was head clerk of a steamboat; from that I became master of a steam-
618 boat. I have operated boats between Cincinnati and Cairo, Illinois, on the Ohio, on the Cumberland River from its source to its mouth, and on the Mississippi River from Cape Girardeau to New Madrid, Missouri.

Mr. Baxter: Were you not the traffic manager of what was known as the Ryman Line?

Mr. Gallagher: Yes sir; 19 years.

Mr. Baxter: State whether or not, during the time you have been engaged in the river transportation business you have had occasion to transport grain from Evansville, Cairo, Paducah and other points on the Missouri & Ohio Rivers and the Mississippi River, and on the Wabash River, to Nashville, Tenn.

Mr. Gallagher: Yes sir; practically all of my life, during the navigable season.

Mr. Baxter: At what rate have you transportated this grain from what is known as the Ohio River crossings to Nashville during that entire period?

Mr. Gallagher: The rate has varied from 5 cents per bag to 9 cents per hundred pounds.

Mr. Baxter: What would 5 cents per bag be, per pound?

Mr. Gallagher: Well, I have not figured that out. We average it at about 145 pounds to the sack.

619 Mr. Baxter: Less than 5 cents a hundred pounds?

Mr. Gallagher: Oh, yes; decidedly so—56 pounds to the bag.

Mr. Baxter: How many steamboats were there plying on the Cumberland River below Nashville during the calendar year 1908?

Mr. Gallagher: Thirty-three, according to the Government's statistics, the reports of the Engineer, United States Engineer at Nashville there.

Mr. Baxter: I hand you, Captain, a document described as Annual report of the Chief of Engineers, of 1909, Appendix BB, entitled "Report upon the Improvement of Rivers and Harbors in the Nashville-Tennessee District," compiled by W. W. Harts, Major, Corps of Engineers, U. S. A., in charge. Please refer to page 1678-1679

first—and state how many steam stern wheel boats are shown a plying on the river in the year 1908 (handing pamphlet to wi ness).

Mr. Gallagher (after examination): The list of steam boats, ster wheel, plying on the Cumberland River below Nashville, Tenn for the calendar year of 1908, thirty-three.

Mr. Baxter: Now, Captain, if you were assured that the tonnag of all the grain that is reshipped from Nashville to the
620 southeastern territory for your transportation line—what rate would you make on that quantity of grain, say from Padu cah, delivered from the river and rail warehouses, from Nashville per hundred pounds?

Mr. Gallagher: 6 cents per hundred pounds, and that would include the labor of loading and unloading.

Mr. Baxter: From your knowledge of the Cumberland River situation and the available river tonnage in the way of barges and boats that are idle, state whether you could acquire transportation facilities in the way of boats and barges to successfully transport during the grain season 2,500,00- bushels of grain from Paducah to Nashville.

Mr. Gallagher: Such tonnage is ample. We could acquire a good deal more than would be necessary to do that. 2,500,000 bushels.

Mr. Baxter: Now, Captain, as a river man, if you were assured that the local rate of 10 cents per 100 pounds from the Ohio River crossings, or even 8 or 9 cents locally, would be permanently maintained from Paducah and the other Ohio River crossings into Nashville, I will ask you to state whether or not you, as a river man, would undertake to transport all of the grain or a quantity
621 of the grain that is reshipped from Nashville to the southeast at rates not to exceed 6 cents per hundred pounds from these points into Nashville?

Mr Gallagher: Personally I believe I could get a company in 15 days if those rates were maintained. I know it would be done within 15 days' time if the railroads would maintain their rates.

Mr. Baxter: From your knowledge of the navigability of the Cumberland River, state whether in your opinion this quantity of grain could be transported during the grain season.

Mr. Gallagher: Easily, sir.

Mr. Baxter: Now, Captain, the grain season and the navigable season on the Cumberland River coincide, do they not?

Mr. Gallagher: Yes. Boats are now operating on the Cumberland River. Mr. Kelly stated, I believe, on the stand, that the wheat season did not apply to the navigable season of the Cumberland River. It does, I say, now. It did not a few years ago.

Mr. Baxter: How many other packet lines handle grain on the lower Cumberland River?

Mr. Gallagher: There is no line outside of the Cumberland River Steamboat Company.

Mr. Baxter: Now, are there any transient boats engaged in
622 the transportation of tows in the Cumberland River?

Mr. Gallagher: Yes; many, I think. The fact is that

whenever there is a heavy grain season the tow boats are brought into requisition to handle the grain.

Commissioner Clements: Are there any transient boats that engage in the transportation of grain on the Cumberland River?

Mr. Gallagher: Yes sir; very many; during the heavy grain season many tow boats and barges are brought into requisition to handle the heavy grain crop to Nashville from the Ohio River and Wabash Valley.

Commissioner Clements: Where does the bulk of the grain brought in by boats to Nashville come from?

Mr. Gallagher: The Ohio and Wabash Rivers. Quite a large lot, though, comes from the Cumberland River Valley.

Commissioner Clements: Where does the bulk of the grain brought in by the boats to Nashville go?

Mr. Gallagher: You mean outside of Nashville?

Commissioner Clements: Yes.

Mr. Gallagher: Our boats and all boats unload at Nashville. There is very little grain now unloaded on the wharf at Nashville. It is unloaded on cars on the Tennessee Central Incline Railroad for reshipment south, as I understand it, and at the River and
623 Rail Warehouse on the L. & N. tracks for reshipment south. That is my information; we do not follow it through.

Commissioner Clements: Do you know of any other instance where the merchants and millers of Nashville have modern boats to draw grain from St. Louis to Nashville?

Mr. Gallagher: Yes sir; a special instance, the Liberty Mills. They have brought quite a large amount of wheat from St. Louis to Nashville on a chartered boat.

Mr. Baxter: Refer to that report and state the number of tons of grain that came up the lower Cumberland River for that year, 1908.

Mr. Gallagher: 19,031 tons in 1908.

Mr. Baxter: Do you know what amount of grain tonnage came up the river for the year 1907?

Mr. Gallagher: 32,640 tons.

Commissioner Clements: What does that amount to in bushels?

Mr. Gallagher: Well, there is about 40 bushels to the ton—38, or something like that—36. They have got a lock and dam system on the Cumberland River. Under an Act of Congress there is a penalty attached to each boat if they do not make a report as to their tonnage, including passengers and everything else, in passing
624 through these locks, and under the law they will not lock you through or let you out of the locks until you surrender this report to the Lock keeper, and he compiles his statistics from that, and they are practically accurate.

Mr. Baxter: You file that as Exhibit 1 to your testimony, please.

(The pamphlet referred to was received in evidence and marked "Exhibit No. 1, Mr. Gallagher.")

Mr. Gallagher: I find this. The report for 1907 was given to me by Major Flagler. He did not have a copy of the 1908 report, which

would include this 32,640, but he stated to me that it was on file at the War Department at Washington.

Commissioner Clements: Yes, that can be obtained.

Mr. Baxter: Now, Captain, refer to page 1679 and state what amount the Government has expended in improving the lower Cumberland River, and give the history from your personal knowledge of the advantages that will be derived.

Mr. Gallagher: As a boy, I remember these first appropriations. I believe the notation here is "Old project, p. 339 H. Doc.—docket I guess—No. 421, 57th Congress, Second Session, Cumberland River, Tennessee and Kentucky (all expended below Nashville). I remember when they used that money, just as a small boy

625 Mr. Baxter: Give the amount.

Mr. Gallagher: $155,000.

Commissioner Clements: What Congress was that?

Mr. Gallagher: The 57th Congress. That is the notation in the back here.

Commissioner Clements: You would not be such a very small boy when the 57th Congress was in session.

Mr. Gallagher: At that time it was in order to remove snags out of the river and build dams and so forth. It goes on to state it was $155,000 and then $305,000. That goes along with this upper notation here (indicating). Now the new project for locks and dams, Act of July 13, 1892. That is for locking and dam-ing the Cumberland River. These are appropriations for below Nashville.

July 13, 1892, $40,000; that was to acquire a site; I am satisfied of that.

August 18, 1894, $30,000.

June 3, 1896, $80,000.

March 3, 1899, $100,000.

Amended Act of June 13, 1902, $180,000.

March 3, 1905, $10,000.

March 3, 1909 Maintenance, allotment, dated April 1, 1909, $10,000, making a total of $450,000. Up to that time, the

626 total appropriated was $910,000. Received from other sources $986.30, making a grand total of $910,986.30. Now this money expended has vastly improved navigation along the Cumberland River during the agitation here in the last year or so. I believe Congress now has adopted a policy to open the Cumberland River from Nashville to the Ohio, making it practically navigable the year around. On June 25, 1910, $673,000.

We have got Lock A completed and in operation. This will complete O and C, and sufficient money to buy the sites for the other four locks in the Lower Cumberland. When locks B and C are completed, in my judgment we will have navigation from 10½ to 11 months in the year. Practically the worst parts of the river will be overcome with these locks. Within 18 months that ought to be completed. The money is available and they are going to work on it at once.

Mr. Baxter: How far up the river from Nashville is the Cumberland River——

Mr. Gallagher: 175 miles. Locks from 1 to 7 are now complete.
Mr. Baxter: How far from Nashville to the mouth of the river?
Mr. Gallagher: 196 miles and some hundredths.
Mr. Baxter: I will ask you, Captain, if there is not a great deal of grain raised on the upper river and shipped in to
627 Nashville?

Mr. Gallagher: Yes sir; grain and wheat and hay.

Mr. Baxter: State whether in your opinion Nashville is a constant trading and distributing market, and give your reasons in full for any opinion you may express. You have worked up your reasons; what are they?

Mr. Gallagher: I have spent my entire life on the Cumberland River. I know something about the traffic proposition there, I expect probably better than any man living today. The old ones are all dead and gone. Before the War—as it was handed down to me by my father who was a steamboatman on the Cumberland River—the Cumberland River was one of the most important highways for commerce west of the Alleghany Mountains, not excepting the Mississippi from St. Louis down. He owned and controlled some of the largest steamboats that navigated the river in that day and time. As we all know, the Ohio Valley, the Mississippi Valley and the Cumberland River Valley depended entirely upon steamboat transportation. So with Nashville at that time, as it was handed down to me by my father, who steamboated here before the War. In 1854, as I understand, the Chattanooga Railroad was completed. After I attained the age of 13 years of age I realized the fact that the Chattanooga Road and the Cumberland River were a
628 great proposition for the reshipment of grain to the south and south east. I was a little bit young then. I was down there weighing corn at 13 years of age, on the wharf, and our service was not as good then as it is now, of course. From that fact, Nashville being located on the Cumberland River and in connection with the Nashville and Chattanooga Railroad leading to the southeast, has been an important gateway for the corn purchased in the Wabash and Mississippi River valleys in the early period of Nashville's history. I will just state here that Mr. I. T. Ray is not here with us, but his father, Major Ray, was here then. There was then no grain marketed at either St. Louis or these other cities in the line of connection and communication to the southeast. The Cincinnati Southern Railroad and its connections had not been built. The Louisville and Nashville Railroad operated only from Louisville to Nashville. It had not extended its line to St. Louis. There were no bridges across the Ohio River and the gauges of the railroads north and south of the Ohio River were different and these conditions presented obstacles to Louisville becoming a primary grain market.

Mr. Baxter: There is one question. Ever since you can remember, grain has been coming into Nashville by the railroads?
629 Mr. Gallagher: All the time; yes sir. It is practically three-fourths of our proposition—the grain in the Cumberland River.

Mr. Baxter: Three-fourths of what?

Mr. Gallagher: Of our tonnage.
Mr. Baxter: You mean river tonnage?
Mr. Gallagher: Yes sir.
Mr. Wimbish: How much of that is corn?
Mr. Gallagher: The major portion of it is corn.
Mr. Wimbish: Do you carry any oats?
Mr. Gallagher: Oh, yes sir.
Mr. Wimbish: How much?
Mr. Gallagher: The oat proposition is pretty light along the Cumberland and Ohio Rivers. It is corn and wheat from the Cumberland and Mississippi Rivers. But three-fourths of our tonnage right today is corn and wheat. We could not live without it.
Commissioner Clements: About what per cent is picked up on the river.
Mr. Gallagher: The conditions are peculiar in our country this year. Last year we had a failure of the corn crop practically along the entire Cumberland River. On the Ohio with its Islands
630 practically producing all the time, we hardly ever have a failure there. The tonnage was very light last year. I do not believe our present tonnage will be able to move the grain crop next season on the Cumberland River, including the tonnage that will be offered from the Ohio and Missisippi Rivers. The crops are just fine.
Commissioner Clements: Could you give us about what the average would be; how much of your grain tonnage is brought to you on the Cumberland River and grown there in the Cumberland Valley.
Mr. Gallagher: I could not just tell that.
Commissioner Clements: Is the greater portion of it through grain that has come from beyond, or grown locally on the river?
Mr. Gallagher: No sir; not the greater portion of it. It comes from the Ohio, Wabash and Mississippi valleys. It is a great grain producing country for wheat and corn both.
Commissioner Clements: Do you think more than half of it comes from the Ohio——
Mr. Gallagher: And Wabash River valleys. Yes sir; there would be more than half of it.
Commissioner Clements: You stated something about if you were assured that the rates would be the same as they are by rail, you would readily take the capital and command this entire busi-
631 ness to the exclusion of the railroad, because you say you can do it for 6 cents—or did you say less than that.
Mr. Gallagher: The expenses of loading and unloading are 6 cents a hundred.
Commissioner Clements: What were your rates last season on this through business; not from local places on the banks of the river, but on this business that comes to you at the mouth of the river?
Mr. Gallagher: 7 and 8 cents a hundred.
Commissioner Clements: 7 and 8?
Mr. Gallagher: Yes sir. Now, taking this proposition, as these grain men have asked me to make a statement on this reshipping

here at Nashville, it is possible for us to do some business there even with the reshipping, you understand. The railroads certainly have got a competitor in the steamboat proposition and they have got title to it. If the reshipping was taken away from Nashville—our Cumberland Steamboat Company has no interests in any other transportation company other than her own boats. The Ryman Line that is in existence there now has a connection with the railroad and a pro rate and a joint tariff or something of that kind, but we have no connection. I believe this: I have always been a competitor to them, all my life, from Pittsburg, New York and East St.
632 Louis, New Orleans and everywhere else. Yes, and I am satisfied that the Cumberland there will handle the grain. There is no question about that. I have always felt that Nashville was a concentrating and distributing point.

Commissioner Clements: Well, I take it for granted that notwithstanding your interest in the steamboat company, you favor continuance of these reshipping arrangements by rail?

Mr. Gallagher: I certainly do, from the standpoint of Nashville, sir.

Commissioner Clements: Are there any further questions?

Mr. Baxter: Just one other question. I will ask you as a matter of fact was not grain brought in by boat, up the river to Nashville, and reshipped to the Southeast over the Tennessee Central Railroad last year?

Mr. Gallagher: Yes, sir.

Mr. Baxter: And hasn't it been done every season?

Mr. Gallagher: Yes, sir, since they put their incline down there. It makes another competitive proposition at Nashville.

Mr. Baxter: And is not that something that is practiced by Mr. I. T. Ray every season?

Mr. Gallagher: Yes, sir.

Mr. Baxter: And that corn and stuff comes from the Ohio River crossings?

Mr. Gallagher: Yes, sir.

633 Mr. Baxter: May it please your Honor, we have a lot of affidavits here that Mr. Wimbish and myself have agreed upon, and the following witnesses, William Litterer, P. L. Dews, William Dodd and J. Olly Hard, all present in person, will testify to similar facts as testified to by Captain Gallagher, and show this was true continuously from the period prior to the War, down to Captain Gallagher's time except as to the reshipping by the Tennessee Central Railroad as to the grain coming into Nashville. As to grain coming up the river into Nashville, and as to Nashville's being a concentrating and distributing market ever since before the War, the above-named witnesses will testify. It will save just that much time, and in respect to the amount of grain brought up the Cumberland into Nashville, from these points.

Commissioner Clements: I do not see the necessity of calling them, then, according to that stipulation.

Mr. McConnico: Now, as to these affidavits. These affidavits are along the same line that Mr. Gallagher testified to, two of the af-

fidavits being from old steamboat men and two of them being from grain men. The stipulation is that Mr. Wimbish agrees that these affidavits may be filed to obviate the time and trouble of examining the witnesses and taking their testimony, and that the affidavits may be regarded as the testimony of the witnesses.

Mr. Wimbish: They are all sworn to, I suppose.

634 Mr. McConnico: Oh, yes sir.

Mr. Wimbish: I waive all objection.

Mr. McConnico: Of course I understand that Mr. Wimbish is not making any objection—your statement is that these witnesses will testify as in the affidavits.

Commissioner Clements: He waives all formality and consents that they be filed as the sworn testimony of those witnesses, just to save interrogatories.

Mr. McConnico: This is the affidavit of J. H. Wilkes, G. W. Ashtraft, E. S. Kerr and A. S. Hard.

Mr. Baxter: That same agreement applies to the affidavit of George Doubleday. I will give these to the stenographer to be copied into the record.

Mr. McConnico: Those will be copied into the record?

Commissioner Clements: Yes.

Commissioner Clements: Have you anything further to offer, for the Nashville interests or the railroad?

Mr. Baxter: I have a witness for the Louisville & Nashville Railroad, but Mr. Andrews has a witness for the Nashville & Chattanooga Railroad.

Commissioner Clements: About what time do you estimate it will take.

Mr. Baxter: I think it would take at least an hour or an
635 hour and a half, depending a good deal on the cross examination of Mr. Wimbish.

Mr. Wimbish: My cross-examination will be quite brief.

Commissioner Clements: I was just asking these questions to ascertain what was probably before us tomorrow.

Mr. Wimbish: It is not my present purpose to offer any testimony at all or to cross examine any witnesses at great length. I would like very much, if I may do so, to argue the case at this time.

Commissioner Clements: You mean argue it before the Commission?

Mr. McConnico: We are taken somewhat unawares—to take argument and testimony at the same time.

Commissioner Clements: Well, we have done that in some cases, and it seems to be a very good way to do when all of the members of the Commission are here and the Commission has heard the testimony.

Mr. Wimbish: I am the one to insist on the time. I would like, if it is possible, to argue the case now.

Mr. Andrews: We desire to be heard by the Commission. This is a very important case. The Nashville interests and some of the members of the Commission want to hear the facts. I would like to be heard by the Commission in regard to this case.

636 Mr. McConnico: May it please the Commission, from the standpoint of the intervenor and the defendants, the Nashville Grain Exchange, I have not had the pleasure of appearing before the Commission before, and I was relying upon the best information I could get as to the usual practice before the Commission, and I am not prepared to argue this case at the present time. The magnitude of the interests that we represent, and what an adverse decision in this case would mean, are so important to our clients that we very respectfully and urgently ask for the opportunity to present the matter to the entire Commission, after we have had a chance to properly brief and prepare the case for argument.

Commissioner Clements: As I am now advised, it seems improbable that I could get a quorum of the Commission to hear the arguments.

Mr. McConnico: I would ask your Honor to require the preparation and filing of briefs within a reasonably short time.

Commissioner Clements: On my own part, I am extremely anxious that the arguments be had, and I would have been very much better satisfied if the hearing altogether might have been heard by all of the Commissioners. What was reported in this case before was presented by me and of course considered fully by the Commission, but I am anxious to have the argument as full and complete as
637 possible. If the Commission is to decide these questions according to law and according to justice, it takes a whole lot of thinking and the thinking of several people in order to arrive at what we are satisfied is an approximation to that end. Therefore we will at the conclusion of the taking of the testimony tomorrow announce then what will be done. We will take a recess until 10 o'clock tomorrow morning.

(Whereupon, at 5:15 o'clock, p. m., the Commission took a recess until 10 o'clock tomorrow morning.)

638 47.

Filed Oct. 18, 1911. United States Commerce Court. G. F. Snyder, Clerk.

Stenographer's Minutes.

Before the Interstate Commerce Commission.

Docket No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al.

At Washington, D. C., September 27-28, 1910.

639-645 Second Day.

WASHINGTON, D. C., WEDNESDAY, *September* 28, 1910—10 o'clock a. m.

Met pursuant to adjournment.
Present: Commissioner Clements.
Appearances: Same as on yesterday.

Defendants' Testimony.

CHARLES BARHAM, a witness of lawful age, produced by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination:

Mr. Andrews: Please state your full name.
Mr. Barham: Charles Barham.
Mr. Andrews: You are the general freight agent of the Nashville, Chattanooga & St. Louis Railway Company?
Mr. Barham: Yes sir.
Mr. Andrews: And you are situated at Nashville?
Mr. Barham: Yes sir.
Mr. Andrews: I presume you heard the testimony of Major Stahlman, as to the origin of the reshipping privilege at Nashville?
646 Mr. Barham: Yes sir.
Mr. Andrews: Please state whether or not you concur in that statement by Major Stahlman?
Mr. Barham: You will understand, of course, that in speaking of these historical facts I do not speak at first hand. The information I have is derived from our records and from statements which have been made to me by my predecessor, Mr. George R. Knox, who was general freight agent of the N. C. & St. L. Road for some thirty years, and who was at Nashville at the time the Nashville reshipping was commenced; I mean the present form of Nashville reshipping

R. C. CIRCULAR No. 2811.
(Cancels R. C. Circular No. 2689, of January 1, 1913.)

I. C. C. No. A-11335.
(Cancels I. C. C. No. A-11205.)

Louisville & Nashville R. R. Co.

OFFICE OF THE GENERAL FREIGHT AGENT.

Defendants' Exhibit No 11 C.S. Complaint Docket 825

RULES AND REGULATIONS

GOVERNING THE ALLOWANCE OF TRANSIT PRIVILEGES

TO

GRAIN, GRAIN PRODUCTS, HAY AND STRAW

AT

NASHVILLE, TENNESSEE

RULES AND REGULATIONS

GOVERNING THE ALLOWANCE OF TRANSIT PRIVILEGES

TO

GRAIN, GRAIN PRODUCTS, HAY AND STRAW

AT

NASHVILLE, TENNESSEE

Drawn from Ohio and Mississippi River Crossings, and Points North and West Thereof, to Points in Southeastern and Carolina Territories, and Local Stations on the L. & N. R. R. South of Nashville, Tenn., as Herein Described.

(FOR EXCEPTIONS SEE NOTES ON PAGE 2.)

IN CONNECTION WITH

NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y CO. ..... Concurrence No. FX 3-198.

The Ohio and Mississippi River Crossings referred to herein are:

Cincinnati, Ohio.
Louisville, Kentucky.
Owensboro, Kentucky.
Henderson, Kentucky.
Paducah, Kentucky.
Columbus, Kentucky.
Hickman, Kentucky.
Evansville, Indiana.
Cairo, Illinois.
Belmont, Missouri.

Issued December 28, 1909.

Effective February 1, 1910.

ISSUED BY

D. M. GOODWYN, GENERAL FREIGHT AGENT,

LOUISVILLE, KY.

File 303798.
Station Tariff File
Compartment No. 11

200-12-23-1909-5000.

J. P. M. & CO

1. (a) On grain, grain products, hay, and straw drawn into Nashville, Tenn., by rail, from or through the Ohio and Mississippi River Crossings named on title page (except as otherwise provided herein), and reshipped from Nashville to points in Southeastern and Carolina Territories (except L. & N. R. R. local stations other than provided herein), and to local stations on the L. & N. R. R. south of Nashville, Tenn. (see Rule 11), the through rates in accordance with tariffs of initial lines from the Ohio or Mississippi River Crossing (from or through which the shipment originally moved) to final destination, in effect on date of shipment of those commodities inbound to Nashville, Tenn., will be applied, subject to the conditions shown in these rules.

(b) On grain drawn into Nashville, Tenn., via the L. & N. R. R. from Shawneetown, B. & O. S. W. junction Brooklyn, Junction, Duncans, Eldorado, Equality or Lawler, Ill., and reshipped from Nashville to points in Southeastern Territory (see Rule 11), except L. & N. R. R. local stations, the through class "D" rates from the points of origin named to final destination, in effect at date of shipment of the grain inbound to Nashville, Tenn., will be applied, subject to the conditions shown in these rules.

(c) The reshipping authorized in these rules will only apply to such of those destinations referred to in Sections (a) and (b) above, to which the published through rates are applicable via Nashville, and where the commodities are reshipped within six months after date of original inbound paid expense bill.

(d) In applying these rules, the exceptions named in Notes 1 to 4, inclusive, on page 2, must be observed.

2. (a) Transit privileges on grain, grain products, hay, and straw mean the stopping, storage, inspection, weighing, cleaning, clipping, shelling, sacking, grading, mixing, change of consignee or destination, and will apply only to such grain, grain products, hay, and straw as passes through elevators (public or private), warehouses, or mills.

(b) Through consigned shipments of grain, grain products, hay, and straw stopped in railroad yards for inspection in original cars will be considered through shipments and will be handled on established through rates.

(c) On shipments of track grain, grain products, hay or straw originally consigned to Nashville, Tenn.

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(b) Through consigned shipments of grain, grain products, hay, and straw stopped in railroad yards for inspection in original cars will be considered through shipments and will be handled on established through rates.

(c) On shipments of track grain, grain products, hay or straw originally consigned to Nashville, Tenn., the identity must be preserved in each instance, whether forwarded in the same car or transferred, at the instance of the carrier, through an elevator, warehouse, mill, or direct from car to car (and not stopped or unloaded for storage in an elevator, warehouse, or mill), and such shipments shall be treated as through shipments.

3. Grain, grain products, hay, and straw, in order to be accorded transit privileges, must be billed to Nashville, proper, and at the legal rate to Nashville.

4. All elevators, warehouses, mills, and reshippers shall keep records of receipts and shipments, including those by boats, wagons or other means, as hereinafter mentioned, upon forms prescribed or approved by the Manager of the Southern Weighing and Inspection Bureau and affidavits as to the accuracy

(c) To keep a record, or to verify the records kept by the railroads, elevators, warehouses, mills or reshippers, of the actual amount of grain, grain products, hay, and straw loaded out by such elevators, warehouses, mills or reshippers, including that which may be forwarded by wagons or other means.

(d) When grain, grain products, hay, or straw are loaded out by a warehouse, elevator, mill, or reshipper, including that which may be forwarded by boats or that which may be forwarded by wagons or other means, original inbound records of equivalent and corresponding tonnage shall, at that time, be canceled by the shipper, said cancellation to be then or subsequently verified by the inspectors as further herein provided.

There shall be no substitution of tonnage of grain, grain products, hay or straw brought in by boats or wagons, or by rail from non-transit points, for grain brought in on transit rates.

(e) Expense bills representing grain, grain products, hay or straw delivered for local consumption shall not be available for reshipping, and must be immediately canceled by the holder thereof.

(f) The inspector shall, as frequently as may be necessary to accomplish the purpose, verify the cancellation of surplus tonnage held by any elevator, warehouse, mill or reshipper over and above the amount of grain, grain products, hay or straw in possession of said elevator, warehouse, mill or reshipper, as provided in Section (d), and in considering the amount of tonnage entitled to reshipment, not only paid but unpaid and accrued expense bills shall be taken into account.

(g) Expense bills for grain, grain products, hay, and straw must be accompanied, when tendered for reshipment, by a certificate in the following form, to be signed by the shipper:

RESHIPPING CERTIFICATE.

_____of Expense Bill,

7. Freight bills representative of the property reshipped must be surrendered, as follows:

Barley for barley.	Hominy for hominy.
Bran for bran.	Middlings for middlings.
Corn for corn.	Mill feed for mill feed.
Cornmeal for cornmeal.	Oats for oats.
Flour for flour.	Rye for rye.
Grits for grits.	Straw for straw.
Hay for hay.	Wheat for wheat.

except that a shipment consisting of a mixture of unlike grains, grain products, hay or straw will be billed as a mixture, and tonnage in kind surrendered in proportion to its ingredients.

8. On corn in the ear or in the shuck shelled in transit apply the following basis of ratios:

For every bushel—	Shellers may reship—
70 pounds ear corn without shuck received	56 pounds or 80 per cent. shelled corn. 14 pounds or 20 per cent. cobs.
75 pounds ear corn in shuck received	56 pounds or 74.7 per cent. shelled corn 14 pounds or 18.7 per cent. cobs. 5 pounds or 6.6 per cent. shucks.

9. Bills of lading for commodities accorded reshipping privileges will be issued by the agent at Nashville, at through rates in effect on date of shipment of the grain, grain products, hay or straw inbound to Nashville as defined in Sections (a) and (b) of Rule 1, and must show reference to the original point of shipment or Ohio or Mississippi River Crossing through which the shipment moved inbound.

10. Outbound shipments must be billed from Nashville, Tenn., to final destination, assessed at the through rate. The through rate and the divisions thereof north and south of Nashville, properly designated, must be shown in "Rate Column" of way-bill. The revenue on basis of proportion north of Nashville of the through rate must be inserted in "Charges Column" of way-bill.

Also, on outbound way-bills reference must be made to billing from the original point of shipment or the Ohio or Mississippi River Crossing through which the shipment moved inbound, showing date and number of inbound way-bill.

11. For list of points in Southeastern and Carolina Territories see M. P. Washburn's Territorial Directory No. 1, I. C. C. No. 11, [illegible]

(g) Expense bills for grain, grain products, hay, and straw must be accompanied, when tendered for reshipment, by a certificate in the following form, to be signed by the shipper:

RESHIPPING CERTIFICATE.

Tender is hereby made to the ..... of Expense Bill

(f) The inspector shall, as frequently as may be necessary to accomplish the purpose, verify the cancellation of surplus tonnage held by any elevator, warehouse, mill or reshipper over and above the amount of grain, grain products, hay or straw in possession of said elevator, warehouse, mill or reshipper, as provided in Section (d), and in considering the amount of tonnage entitled to reshipment, not only paid but unpaid and accrued expense bills shall be taken into account.

(e) Expense bills representing grain, grain products, hay or straw delivered for local consumption shall not be available for reshipping, and must be immediately canceled by the holder thereof.

70 pounds ear corn without shuck received { 56 pounds or 80 per cent. shelled corn. 14 pounds or 20 per cent. cobs.

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or the Ohio or Mississippi River Crossing through which the shipment moved inbound, showing date and number of inbound way-bill.

11. For list of points in Southeastern and Carolina Territories see M. P. Washburn's Territorial Directory No. 1, I. C. C. No. 11 (L. & N. R. R., G. F. O. No. 1175), supplements thereto or reissues.

For list of L. & N. R. R. local stations south of Nashville, Tenn., see F. A. Leland's Official List No. 3, I. C. C. No. 652 (L. & N. R. R., G. F. O. No. 1390), supplements thereto or reissues.

CONDITIONS OF CERTIFICATE REFERRED TO IN RULE 4 (g).

Transit privileges upon grain, grain products, hay, and straw mean the stopping for storage, inspection, weighing, cleaning, clipping, shelling, sacking, grading, mixing, change of consignee and destination, and will only apply to such grain, grain products, hay, and straw as passes through elevators (public or private), warehouses or mills.

There shall be no substitution of tonnage of grain, grain products, hay or straw brought in by boat or wagon, or by rail from non-transit points, for grain, grain products, hay or straw brought in by rail entitled to transit privileges.

Expense bills will not be valid for transit privileges where the grain, grain products, hay or straw covered by said expense bill has been delivered for local consumption, and such expense bill shall be canceled by the holder thereof. The reshippers shall also, from time to time, cancel any surplus tonnage over and above the amount of grain, grain products, hay or straw that may be held by them.

Expense bills representative of the property reshipped must be surrendered, corn for corn, oats for oats, etc., except that a shipment consisting of a mixture of unlike grains, grain products or hay, shall be billed as a mixture and tonnage in kind surrendered in proportion to its ingredients.

A transfer of expense bills between dealers will be permitted only where the ownership of the grain, grain products, hay or straw is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward on transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. . . . . These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise."

EXTRACT FROM LETTER OF COMMISSIONER E. E. CLARK, OF THE I. C. C., IN EXPLANATION OF THE ABOVE RULE.

"The Commission recognizes the commercial difficulty of preserving the identity of each car load of bulk commodity. . . . . A carrier may ship grain from several different points of origin to a transit point where it may all go into the same bin, and it may forward out of that bin the same kind of grain under its transit rate, provided it forwards on the rate from a given point of origin no greater amount of the same kind of grain or its product than is shipped in from that point, and provided also that the grain that was shipped in from that point has not been locally consumed or otherwise disposed of. We do not think it is permissible or lawful to forward on the remainder of a transit rate grain or other commodity that did not come into that point under a transit rate. For example, we think it unlawful for a carrier to grant a transit privilege at a certain point where there is both rail and water transportation, and to permit grain that comes in under its transit privilege to be consumed locally and grain that comes in by water or other transportation lines to be substituted for it and forwarded from that point on the remainder of the transit rate. . . . . It is not a question of difference of opinion as to what is a better way of commercially handling the commodities; it is a question of what the carrier and the shipper, both of whom are amenable to the terms of the law, may properly do within the limits of that law."

The statements made to me, and they are borne out by our records, disclose this state of facts; The Nashville & Chattanooga Road started in 1845, being completed in 1854, and was operated from Nashville to Chattanooga with no rail connection west of Chattanooga. It depended entirely upon the traffic received locally and from the boats on the Cumberland River.

That was prior to the completion of the Southeastern Road from Evansville, the Louisville & Nashville Road from Louisville; before the building of the line from Cincinnati south to Louisville, before the building of the Memphis & Charleston, and the C. N. O.
647 & P. Road from Chattanooga. It was the first line to the west projected to strike the Cumberland River at Nashville.

That condition existed without change until the completion of the Louisville & Nashville in 1859. Although the Louisville & Nashville was completed at that time there was substantially no change in circumstances because of the advent of the Civil War, which took up the period to 1865. During the Civil War the Nashville & Northwestern Road, a line which had been projected from Nashville to the Mississippi River at Hickman, was completed by the United States Government for strategic purposes. They had a base of supplies at Johnsonville; and they found it necessary to build that road into Nashville.

The Nashville & Northwestern Road was brought into the N. C. & St. L. System by purchase in 1872, but somewhere around 1867, 1868 or 1869 the Nashville & Chattanooga Road held a controlling interest in that company. They had the same officers, the same General Freight Agent, the same operating management.

With the acquirement of that interest by the Chattanooga Road in the Northwestern the situation changed to the extent that while up to that time it was a matter of complete indifference to the Chattanooga Road as to how the grain or anything else got to
648 Nashville, whether by boat, rail or wagon, they immediately had the direct and vital interest of the bringing of the grain through Nashville by a complete haul from the Ohio River, or the point of production, as far south as we ran, which was Chattanooga at that time, although even then the General Freight Agent of the N. C. & St. L. Road, Mr. Anderson, was general freight agent of the Western & Atlantic Railroad. Therefore, as far back as the early seventies, we had a direct interest running all the way from the Mississippi River to Atlanta.

When we acquired the interest in the Nashville & Northwestern Road we were confronted with the problem of controlling competition with the boats for a reasonable part of the grain and other western produce which had origin in the western territory. That could be accomplished in either of two ways. We could reduce the rates into Nashville from the River to the level of the then boat rates, or we could devise some plan by which we could protect a through rate, all-rail, from the Ohio River to the consuming territory, which would not exceed the combination of water rates plus the rail rates. Naturally we could not charge more than that combination with any hope of controlling any reasonable part of the

business. We did not want to make the Nashville proper
649 rate the then existing boat rate, because it would sacrifice a certain revenue on whatever part of the Nashville local business we might haul in, and it would also affect all that territory basing on Nashville.

We did not expect to eliminate the boat competition entirely. We did not expect to get all of the business which went into Nashville. We expected the boats would control some, but it was the thought that if we could, practically speaking, control the larger traffic, we could share the local business on the somewhat higher rate with the boats; that we could do a reasonable part of that business.

We therefore devised and have continued the so-called Nashville reshipping. It was as we saw it then, and as we see it now, really not a change. The grain was moving, and moving at that rate, and it merely continued to move at that rate.

Also, as we see it, it was in no sense a matter of choice. It was not up to us whether we wanted to do this thing or not; we had to do it; we were compelled to do it, unless we were prepared to see the Nashville & Chattanooga Road merely a line south of Nashville and see our division west of Nashville, substantially speaking, bankrupt.

Now, there were, of course, other reasons. If we should reduce the rates on grain from the Ohio River to Nashville, to say,
650 six or seven cents, it would be impossible to make the present scale of rates on other commodities. While there is no immediate connection between the rates on grain and the rate on dry goods, there is after all a connection. Those things are all relative. If six cents is fair on grain then thirty-five cents probably is not fair on first class.

Therefore we wanted to preserve the Nashville scale of rates, particularly as we knew there were certain commodities which we, in the nature of things could not very well handle. All the original grain dealers at Nashville were directly on the river, so I am now told; I was not there myself. They consisted of two firms. Their facilities were immediately on the river bank. The facilities for handling grain did not leave the river until after the Nashville reshipping had been practiced for quite a considerable time. It was of course predicated upon the faith which those gentlemen had that the arrangement would hold for the future; they themselves appreciated the force of circumstances which had compelled their putting in and assuming that they would continue in that form.

For that reason the business moved away from the river and is now located over an area of probably about ten miles, I should say, in diameter. The same conditions which existed at Nashville
651 did not exist elsewhere.

We have been importuned many times to establish reshipping at Chattanooga, to establish reshipping at Estill Springs, where there is a half million bushel elevator.

Commissioner Clements: Where is Estill Springs?

Mr. Barham: 77 miles south of Nashville, between Nashville &

Chattanooga. There is a very large power mill there and it is in a very fine wheat producing section.

These were the reasons which compelled us to establish reshipping, and as we see it those conditions still obtain; they have not changed in any particular. We have not found that same compelling competition elsewhere.

Mr. Andrews: State whether or not similar competitive conditions, affecting the transportation of this grain out west, exist at Atlanta, Macon, Cordele, or these Georgia towns mentioned?

Mr. Barham: No sir; I think not. We have not felt the force of competition at those points which would impel us to establish such a plan.

Mr. Andrews: I wish you would give us your opinion, if you have one, as to whether the N. C. road would maintain the reshipping privilege at Nashville today if it were not for the competi-
652 tion on the Cumberland River?

Mr. Barham: I do not mind going on record at all in saying that if we were not, as we see it, compelled to reship at Nashville, we would not reship.

Mr. Andrews: You say compelled. Of course you are in one sense not compelled. You could either give up the traffic on the part of your line west of Nashville, or you could make your rates so as to participate in that traffic, if you desired. But your road does not care to give up that traffic?

Mr. Barham: We do not.

Mr. Andrews: You understand that you can either give it up or meet the competition; that is a matter of choice?

Mr. Barham: Yes sir. Should we meet the competition by making a six or seven cent rate on grain from the Ohio River to Nashville, the loss would be so enormous on the Nashville local consumption, and particularly territory basing on that, where the rates are made on the Nashville combination, that it would be something fierce.

Mr. Andrews: Then, as I understand you, it is not a fact that the Nashville, Chattanooga Road grants reshipping privileges to all points, or any points on its line merely because those points
653 may have certain facilities for handling the stuff, is that so?

Mr. Barham: Not at all. The facilities were the outgrowth of the business itself. The reshipping is not put in because of the existence of handling facilities.

Mr. Andrews: Please state to the Commissioner what effect, in your opinion, the granting of reshipping privileges at Atlanta, Macon, Cordele, and these Georgia towns, would have on the handling of the grain traffic by those towns—this grain traffic from the west?

Mr. Barham: Well, if we were compelled in deference to the Commission's procedure in this case to establish reshipping at Atlanta, we could not deny reshipping at other points south of Nashville, situated similarly to Atlanta. If the Nashville & Chattanooga Railroad should establish reshipping at Chattanooga, Rome, Dalton, Cartersville, the Southern Railway, the Louisville & Nashville and the other lines would undoubtedly be compelled for their own protection

to establish reshipping at Knoxville, Huntsville, Columbia, Anniston, Gadsden, Alabama City, Montgomery, Birmingham, Talladega, Columbus, and probably twenty-five towns lying west of Atlanta; all of these points I have named lying west of Atlanta. This would mean, therefore, that everyone of these towns could ship into
654 the City of Atlanta, and could ship into that territory which bases on Atlanta, at precisely the same rate the Ohio River and Nashville can now ship. Atlanta would get new territory extending between Atlanta and the sea. Presumably reshipping would not go to the extent of back haul. We take it for granted that the customary method of reshipping, which means a continuous movement from the territory of production towards that of consumption would obtain, and without back haul.

Therefore Atlanta would get that territory lying east of Atlanta, and everyone of these other towns would also get that territory. They would all fight for that new business. Macon would get reshipping to the section lying between Macon and the sea. She would, however, find Atlanta with her in that territory, with Nashville and the Ohio River, as at present. This entire chain of western towns which I have already mentioned, would also be in that same territory.

Augusta would reship to Macon, because the Georgia Railroad has a line from Atlanta to Macon via Augusta. Augusta would get territory lying between her and the sea. Macon, though, would reship to Augusta and so would Atlanta, and so would these twenty or twenty-five other towns lying west of Augusta and Macon.
655 It would work progressively until you reached the chain of coast cities. There the territory would be common battle ground, for all markets. Macon could ship to Savannah, Wilmington, Port Royal, and Jacksonville, and points basing on those cities, at precisely the same cost as Jacksonville, Charleston and Savannah merchants now pay.

Again, I think there would be double concentration, therefore, and double reshipping. I do not see how it could be avoided.

Mr. Andrews: What do you mean by that?

Mr. Barham: I mean this. The original movement, say, is from the Ohio River to Nashville. The Nashville merchant sells to Chattanooga. Chattanooga has reshipping and resells to Atlanta. The Macon merchant buys from Atlanta—conceivably at least he could buy from Atlanta. In turn the Tifton merchant could buy from Macon, and the Waycross merchant from Tifton, and the Jacksonville merchant from Waycross.

Now, even that is a little bit more complicated than it appears on its face. The rates from the Ohio River to the coast are less than they are to the interior.

Mr. Andrews: What is the rate on grain from the Ohio River to the coast?

656 Mr. Barham: From the Ohio River to the Coast, to Savannah 23 cents, to Macon, 26 cents and to Atlanta 24 cents.

Mr. Andrews: Why is the rate lower to the coast?

Mr. Barham: The original reason is this: The first transportation lines were built from the coast back into the interior. The

original business came via the lines which had been built in central territory, to the seaboard, and then came down the coast by steamer to Savannah; then they worked up into the interior by navigable rivers. Therefore, the rates really started at Savannah, and worked up into the interior. When the lines were constructed from the Ohio River they impinged from the Ohio River. It was an impossible thing to avoid. The Macon man would pay 26 cents, either directly from the Ohio River, or through some combination of reshipping via other points. If he reshipped from Savannah there would be the necessity of refunding him three cents without any additional compensation for the added haul. I do not mean by that the line from Macon to Savannah would carry the business free, but there would be readjustments of charges from the Ohio River to Savannah which would have that ultimate effect. I cannot conceive of any advantage which the coast merchant would gain. He would simply throw his present local market open to every-
657 body. The chain of towns lying next out from the coast would be compensated only by a narrow additional strip of territory, for the invasion of their whole territory by anywhere from twenty to fifty markets.

So it would work progressively back. Nashville, of course, would not be affected in the sense that its territory would be at all reduced. Nashville would continue to ship as at present.

Mr. Andrews: I understand that you grant milling in transit at Atlanta, and you do not grant the reshipping privilege at Atlanta. Now, I wish you would explain why. Differentiate, if you can, the difference between milling-in-transit and these privileges which you grant.

Mr. Barham: Milling in transit was also originally a Nashville institution. That was another one of those things started by the N. C. & St. L. Railroad. The first milling in transit in the United States was at Nashville, Tennessee.

Now, this has been related to me by the men who put it in, Mr. Knox. There was a mill at Nashville grinding local wheat and wheat from the Cumberland River. The wheat harvest starting in July, they could control enough wheat to carry them well into the fall; probably, say, until the first of the winter. Then they would close down until the next wheat harvest. The
658 owner of that mill, was, I think, Mr. Noel; I will not be certain.

Mr. Andrews: Old man Oscar?

Mr. Barham: I think Mr. Oscar Noel. He went to Mr. Knox and told Mr. Knox if he would put in a plan by which he could go to the grain fields of the west for his wheat he would undertake to run that mill twelve months in the year. The mill was not on the river. Bought grain could not come up unless it payed an additional drayage, and other expense incident to transfer.

Mr. Knox undertook to do that, experimentally, having secured the cooperation of the Louisville and Nashville Railroad, through Mr. M. H. Smith. The mill was quite a success.

Following that the lines in the Southeast became very restive.

They said: "Here you are with a great big mill at Nashville; you have this business all throughout our territory and we are not going to stand for it." So the associated railroads of the Virginias and Carolinas, and the Southeastern Freight Association Lines, the Southern Railway, Atlantic Coast Line, Seaboard Air Line and others, determined to extend the practice. It so happened that I was the stenographer of the meeting at which the rules were
659 adopted, at Old Point Comfort, about sixteen years ago. By that time the Nashville mill represented an enormous investment. The Nashville lines did not feel that they could destroy their investment. It would have been a destruction of the investment had they cancelled the privilege; at least in a very large measure. Therefore they determined to continue it, and did continue it, against that opposition and against a great deal of force. Having once started and having put this mill here, and that mill there, why it remained.

Mr. Andrews: Have you any other point on the N. C. Road at which transit privileges are allowed, except at Nashville?

Mr. Barham: We have no transit privileges on grain at any point except at Nashville. We have some local transits on lumber in the lumber producing section, but we are right at the point of cancelling those.

Mr. Andrews: I think that is all.

Cross-examination:

Mr. Wimbish: Do the objections against reshipping and other transit arrangements apply to milling in transit?

Mr. Barham: Theoretically, yes. Personally I oppose milling in transit. I do not think a carrier should be required to perform two services for one rate.

660 Mr. Wimbish: But you opposed it on the ground you have stated, as being reason why the other transit privileges should not be extended?

Mr. Barham: Yes sir.

Mr. Wimbish: If I understand you, if this privilege is extended to Atlanta, it would be followed by an extension of that privilege to a great many towns in Tennessee, Alabama, and Georgia?

Mr. Barham: Yes sir.

Mr. Wimbish: With the result that each town or market nearer to the fields of production could reship to all towns south and east?

Mr. Barham: Yes sir.

Mr. Wimbish: Would that not result in stimulating competition between these markets?

Mr. Barham: Between the markets themselves?

Mr. Wimbish: Yes sir.

Mr. Barham: Well, of course that is conjectural; it might have that result; it might be affected in the prices.

Mr. Wimbish: If Rome and Dalton and Anniston would ship into Atlanta and points basing thereon at the same rate that Atlanta could ship, would not the fact that all of these markets

could come into that territory on equal terms, greatly
661 stimulate competition?

Mr. Barham: I think Mr. Hughes yesterday offered some very strong testimony in that respect. Of course I am not a grain dealer, and anything I say would be merely a matter of personal opinion. From what I have heard it seems that some of our grain friends are always at the point where someone must sacrifice. Probably if there were 250 dealers, the total consumption and demand not being increased, the consumer would always be able to find one unfortunate. I think that was Mr. Hughes' idea, and it seems to be rather a *paul*sible one.

Mr. Wimbish: With your knowledge of the operation of economic laws, would not those cities develop?

Mr. Barham: Unquestionably ten men create more competition than two men.

Mr. Wimbish: Do you conceive that is objectionable?

Mr. Barham: I think unrestrained competition is not an unmixed blessing.

Mr. Wimbish: You think that competition then would be unrestrained?

Mr. Barham: I think competition can run mad.

Mr. Wimbish: Do you think that competition would run mad?

Mr. Barham: Yes. It would be an almost unavoidable
662 condition.

Mr. Wimbish: One of the important reasons that justifies the existence of transit privileges is the fact that the grain may be held in storage after having been treated at some convenient point within or contiguous to the consuming territory, in order that the demands of consumption may be conveniently and economically met. Would it not be true that that purpose would be served at least as well at Atlanta, if not better than at Nashville, owing to her climatic conditions, owing to her financial and commercial strength and importance, and owing to the fact that she is in the heart of this consuming territory, with rail lines leading out in all directions?

Mr. Barham: I think the accumulation of grain, the accumulation of cotton, and of all the other great staples is an economic necessity. I see no reason why the accumulation should be a rate problem, however. Grain could be accumulated at a point and pay rates in and rates out. Cotton could be accumulated at a certain point and pay rates in and rates out. It is a practical transportation problem to be solved, as I see it, by the owners, by the merchants and by the consumers, rather than by the carriers.

Mr. Wimbish: They can, if the carriers would simply give
663 us fair play. If you did not have special privileges at Nashville, Atlanta could probably do it, but when Nashville can ship in and around Atlanta cheaper than Atlanta can do it——

Mr. Barham: I am not arguing special privileges. But I do not want to be understood as denying the fact, or questioning it for one moment, that accumulation is an economic necessity. I think Commissioner Clements made the statement yesterday, or advanced

the thought, that probably lines in the west that accumulated grain at one point, accumulate it at all points where there was an equal demand. I do so understand the Commissioner. I think, however, that is a mistake. Take, for instance, the Illinois Central Railroad. The Illinois Central runs from New Orleans to Chicago and from New Orleans to Omaha. It traverses the heart of the grain belt. It goes through one of the very best cotton sections in the south. The Illinois Central does accumulate and concentrate cotton in the south but does not in the west. It accumulates and concentrates grain in the west, but not in the south. That is true of the Erie and the New York Central and the Pennsylvania as to grain. These lines have roads which go through the grain belt and then out of it and into the consuming territory.

In other words, concentration markets in my experience
664 are in, near, or adjacent to the territory which produces that commodity in a surplus quantity, having more than it needs for its own consumption, and therefore it must find a market for the overflow.

Mr. Wimbish: I will not argue, even in the form of a question, the difference between primary markets and markets of concentration and supply. I merely wish to say that west of the Mississippi River it is the custom to extend transit privileges at every important point, such as on the M. K. & T. which does it at every point on its lines—that is evidence in this case.

Mr. Barham: But does not the M. K. & T. traverse a uniform teritory?

Mr. Wimbish: I do not care anything about that.

Mr. Barham: It goes from one territory into another.

Mr. Wimbish: That is all right. Now, if you extend these transit privileges, for the reasons I have stated it would seem that Atlanta would naturally double up that business with her capital and commercial enterprise and other things; then the Atlanta merchants would have enough of this grain in storage to supply the consuming market. The mere fact that towns surrounding her could ship into common territory with her would operate very strongly to
665 keep the price of Atlanta grain down; would it not?

Mr. Barham: I daresay. Do not misunderstand me at all. Atlanta is magnificently situated for the distribution of any product. I do not want to be misunderstood. The Atlanta climate is the equal of any climate I ever saw. It is one of the most delightful towns in the south and her merchants are strong, able men. Atlanta is surrounded by a splended territory and all that. But we differ as to the underlying thing. I maintain the transit privilege ought not to be a rate problem.

Mr. Wimbish: Would it not be of benefit, aside from the question of competition and price, to have within the consuming territory a large market for supply?

Mr. Barham: Why, certainly.

Mr. Wimbish: So that smaller markets and consumers could readily and steadily draw their supplies from that source?

Mr. Barham: That would undoubtedly, as I see it, be a good

thing, and be a very much better thing if it did not extend beyond Atlanta.

To the extent that Atlanta's privileges are shared by other towns, in whole or in part, it would of course decrease the value of the privileges for the Atlanta merchants. I have——

666 Mr. Wimbish: You could provide in your tariffs that there would be only one stoppage on that grain as you provide for only one elevation.

Mr. Barham: That is entirely a different thing. With the performance of that service the necessity for elevation disappears.

Mr. Wimbish: It would not be impractical at all, would it, to provide that his grain moving on the through rate should be entitled to the privilege of stoppage for treatment or storage only once?

Mr. Barham: Why, certainly not. It would be entirely practical to do that; but whether we could maintain it would be another question. I doubt if we could maintain the proposition. That is the objection.

Mr. Wimbish: Can you get me up a statement showing the tonnage on grain and grain products, and hay, into Nashville by rail and the shipments out of Nashville by rail, for the past three years?

Mr. Barham: I could, at an enormous expenditure of time and money. It is entirely possible to do it, but it would be a very burdensome and very expensive thing to do.

Mr. Wimbish: You do not have those figures at hand?

667 Mr. Barham: No; we have not compiled that character of data regularly for a long while. At one time we did.

Mr. Wimbish: Do you know whether there is a source of that information available?

Mr. Barham: There is not. You would have to get the original records comprising the original waybills, to do it.

Mr. Wimbish: I will ask you if the quantity of these commodities shipped into Nashville is greater or less than those shipped out? Is the inbound movement into Nashville of grain and grain products and hay by rail greater or less than the shipments out?

Mr. Barham: By rail?

Mr. Wimbish: Yes; by rail.

Mr. Barham: That is also a matter of opinion, in the absence of figures. I rather think the movement in exceeds the movement out. That is conjectural. I hesitate even to advance an opinion on it. We carry more grain out, however, than we bring in.

Mr. Wimbish: I imagine you do. Jacksonville is practically a reshipping point, is it not?

Mr. Barham: You mean to the extent that the rates to Florida base upon Jacksonville?

668 Mr. Wimbish: Yes.

Mr. Barham: Yes sir.

Mr. Wimbish: In reshipping at Nashville you get the inbound and outbound haul; you get the whole rate if it comes over your line?

Mr. Barham: Yes sir.

Mr. Wimbish: And you get the out rate if it comes over some other lines?

Mr. Barham: Yes sir.

Mr. Wimbish: You would not do that at Atlanta; you would have to shrink your rate to Atlanta and would get none of the out haul?

Mr. Barham: We get no out haul. If you protect the through rate you must protect the divisions of the through rate precisely as if that shipment had originally made the through movement without stop; otherwise it is not reshipping. When the N. & C. Road first made a connection with the Louisville & Nashville we tried to hold the L. & N. up. This is tradition. We refused to give the L. & N. the same proportions up to Nashville that we accepted from our own line. But it took only a little while to see that that was not only wrong in ethics, but it was bad business policy;
669 and therefore we soon got down to the correct method of handling, which is that the shipment starting from the Ohio River, going, for example, to Macon, Georgia, and reshipped at Nashville, shall pay every component part of the through route from the Ohio River to Macon, precisely the same revenue as if it had moved from the Ohio River to Atlanta direct.

Redirect examination:

Mr. Andrews: Mr. Wimbish has at some length dilated on the advantages of a town if it has these transportation privileges, such as Nashville has. If I understood you correctly, you said that your company did not extend these privileges to Nashville because of the advantages that Nashville might derive from them; is that right?

Mr. Barham: Not because of the advantages which Nashville may derive, but through the force of compelling circumstances utterly beyond our control.

Mr. Andrews: Only on account of competition?

Mr. Barham: Yes sir. We would get out of it tomorrow, if we could.

Commissioner Clements: You say that Nashville is the first place where milling-in-transit was established in the United
670 States.

Mr. Barham: That is my information.

Commissioner Clements: That was about when?

Mr. Barham: That was either in the late sixties or early seventies.

Commissioner Clements: It has now gotten all over the country?

Mr. Barham: Everywhere now; yes sir.

Commissioner Clements: And you said you were the stenographer who reported the discussion of it at some meeting when the other southern roads were protesting against it?

Mr. Barham: Yes sir.

Commissioner Clements: And they adopted some sort of an announcement. I did not quite understand you, whether that was resolving this is to put it in——

Mr. Barham: Yes sir.

Commissioner Clements: Or insisting on your road taking it out.

Mr. Barham: It was because the Nashville line had refused to pull it out.

Commissioner Clements: So the result was each went ahead and spread it?

671 Mr. Barham: At that time, though, speaking partly from recollection, the practice had extended on the Nashville & Chattanooga road beyond Nashville.

Commissioner Clements: You mean south?

Mr. Barham: Yes sir.

Commissioner Clements: Between Nashville and Chattanooga?

Mr. Barham: Yes sir.

Commissioner Clements: Do you see any other reason why a particular place like Estill Springs should have milling in transit and be denied reshipping in transit? What is the difference between the two that in your judgment would justify the one and not the other?

Mr. Barham: I do not justify either one, Mr. Commissioner, so far as the principle or theory is concerned. I think either is unjustifiable. One represents a condition which exists, and which you cannot change. It is an evil, but it is there and it cannot be changed. Now, the other has not so far gotten there, and probably it could be kept from being extended.

Commissioner Clements: Is there just as much reason in your judgment for condemning that one as the other?

Mr. Barham: Theoretically, yes sir.

Commissioner Clements: Practically.

672 Mr. Barham: I do not think so, practically.

Commissioner Clements: Getting away from Nashville now, take Estill Springs.

Mr. Barham: Well, Estill Springs has the largest flour mill south of the Ohio River, with a capacity of thirty-five hundred barrels a day and with a half million bushel elevator. I do not know what the property is worth, but I suppose it cost a half million dollars, at least that. If we were to pull out milling-in-transit at Estill Springs we might as well go down and destroy the mill, so far as the man's money is concerned.

Commissioner Clements: Did they have milling-in-transit there from the time the mill was established?

Mr. Barham: Yes sir.

Commissioner Clements: Suppose they had not had it?

Mr. Barham: They would never have put it there.

Commissioner Clements: Would it have been such a plant as it is now?

Mr. Barham: No sir; they never would have put it there.

Mr. Andrews: You mean the railroad would not put it there.

Mr. Barham: No; that was not the Commissioner's question. It was established because of the fact they would get milling-in-transit, and without that the plant would not have been constructed.

673 Commissioner Clements: Since such practices as that—and I am just asking these questions to get everybody's view—have gotten in at one place and not at another, and a great business is built up by reason of it having gotten in; and at another place, similarly situated, the practice is not in and therefore there is no chance for the business to build up at such place which does not have it, what is the fair and just solution? To leave it like it is and let the place that has it keep it and dominate the traffic?

Mr. Barham: You are speaking of reshipping?

Commissioner Clements: Yes. Or will you give others an equal chance to get what they can on the same basis?

Mr. Barham: I can see that I have failed in some particular to make myself plain. What I have said, or tried to say, is that reshipping exists at Nashville today not through choice, on the part of the Nashville Railroads, but through dire necessity, a set of circumstances utterly beyond our control and which we cannot change, however much we might want to make the change.

I have also often gone to the extent of saying that if these circumstances were changeable, that in my judgment reshipping
674 at Nashville ought to be abolished. Therefore, so feeling, I cannot think it ought to be extended to other places not possessing those compelling circumstances.

Commissioner Clements: Take the milling-in-transit. You say that is objectionable in theory and in practice——

Mr. Barham: I think we are reaping the result of our own folly, so far as that is concerned.

Commissioner Clements: But it is there. Do you give it to any other place where a man may build a mill?

Mr. Barham: Yes sir; having departed from sound principle and having of our own volition extended milling in transit to include probably thirty or forty local mills on our line, I do not see how we could in reason, or as a matter of right, refuse any other point desiring to put up a mill along our line. As a matter of fact, we do not so refuse.

Commissioner Clements: You know there have been many decisions to the effect that where water competition enters into the situation (assuming it does to the extent that has been stated here at Nashville, on the Cumberland River) the meeting by the rail carriers of that kind of competition justifies the lower rates, lower than would be charged for a shorter distance—a long and
675 short haul proposition as applied to a water competitive point. But do you recall any case, any case in practice by the railroads, where competition of that sort has been used to justify the extension of lower rates by a reshipping plan or otherwise to points beyond and into a territory where there are places that are wholly unaffected by it?

Mr. Barham: Not within my experience; I do not think there are any such in the south.

Commissioner Clements: Now, is that not what you do at Nashville?

Mr. Barham: What is that?

Commissioner Clements: You do not only meet the water competition on traffic to Nashville where the water is there and potent, and present; but you apply a rate arrangement which takes the traffic by Nashville and to the whole southeastern territory at a lower rate finally, basing it on this water competition which is in fact existing at Nashville, and not beyond.

Mr. Barham: I think not. I think probably you have an erroneous idea of that. The water route from the confluence of the Ohio and Cumberland Rivers to Nashville is as much a part of the through service, or could be made so, as the water service to Nashville proper. In other words, if by bringing grain to Nash-
676 ville at six or seven cents and combining that with our local rate of seventeen cents to Atlanta, we fix a rate of twenty-three or twenty-four cents, that is the utmost we can charge for an all-rail haul to Atlanta. That is the extent to which we have recognized the Cumberland River competition.

Commissioner Clements: That is, it is recognized upon business for beyond, but not to Nashville.

Mr. Barham: No. Probably I ought to explain that a little bit more fully. I gather that this is your idea, that having recognized Cumberland River competition as a factor in the through competition, we have ignored it at Nashville proper.

Commissioner Clements: That is involved.

Mr. Barham: We did not change the rate to Nashville, for this reason. As I stated at the outset we did not expect to eliminate competition on the Cumberland River; we did not expect to get all the business. We could only expect to get a reasonable part of it. We were influenced by the thought that if we could practically stop and eliminate the boats as a factor in through traffic, that we could afford to divide the local business on the basis of ten cents, or whatever the local rate might have been at that time.

677 Commissioner Clements: So that you have undertaken to meet it only with respect to through business and not on local business?

Mr. Barham: That is it precisely. In other words, we have minimized our sacrifice just as much as we could.

Commissioner Clements: Now, you have referred to a question I asked you yesterday with respect to milling-in-transit practiced in the west. The territory I had particular reference to at that time was north of the Ohio River, and not in what might more properly be called the west—the M. K. & T. for instance. I had not that in mind. The practice is probably as I suggested here west of the Mississippi River, where it is allowed at a great many places, and possibly at all places where there is a mill. But, however that may be, I had reference to contiguous territory north of the Ohio River, like Ohio and Indiana.

Mr. Barham: Has not the conclusion in your mind been brought about by this fact, that as a rule a railroad operates through like territory and does not as a rule penetrate unlike territory. Therefore, if a road operates entirely within a grain section it will have customs

pertaining to grain all over its road. If it operates entirely
678 within a cotton section it will have customs pertaining to cotton. The Southern Railway runs from Columbus, Mississippi to Richmond, Virginia and to Alexandria. The Southern Railway concentrates Cotton through Mississippi, Alabama, Georgia and South Carolina but it does not concentrate cotton in Virginia. They do not artificially undertake to put in a market at Richmond or Lynchburg and bring all their cotton there, and undertake to force the cotton to New England through Lynchburg and Lynchburg merchants. It concentrates it throughout the cotton producing section.

Commissioner Clements: I do not know what the practice is, but I had reference—for instance, a casual examination of some of the tariffs since yesterday morning, when this question was up. indicates that shipping in transit is permitted at Terre Haute, Indiana, Indianapolis, Laurensburg, Lacross, Peoria, Illinois, Champaign, Toledo, Cleveland, Sandusky. I think these are only a part of the places. I think there is some at Akron and other places in that territory. It appears it is not confined to any one place or any large place; at Chicago, for instance, on the movement of grain to the east. But that practically, where there are elevators or facilities for receiving and forwarding grain, I think it is the custom north
679 of the Ohio River to protect it.

Mr. Barham: Take that particular territory you have mentioned, where the Panhandle Road, which is a part of the Pennsylvania Railroad System, running through those towns, or a larger part of them. The Pennsylvania also runs through Pennsylvania to New York and Philadelphia. There is no grain concentrated and reshipped in Pennsylvania, to my knowledge. In other words, they concentrate and reship in grain producing sections, where there is an over supply, an over-plus of grain. Pittsburg is not a grain market.

Mr. Andrews: As illustrative of that, has Atlanta reshipping privileges in cotton?

Mr. Barham: Yes.

Mr. Andrews: Has Nashville reshipping privileges in cotton?

Mr. Barham: No sir.

Mr. Andrews: Why not? Why has Nashville not as much right to complain and ask for these reshipping privileges in cotton as Atlanta has to ask for reshipping privileges in grain?

Mr. Barham: Theoretically I think it has; but we consider that Nashville is not in the cotton producing section. We have two cotton firms in Nashville handling several thousands of bales per annum; but it is not geographically so situated that cotton ought to be
680 concentrated, and therefore at Nashville we do not concentrate it.

Commissioner Clements: One other question. If between the origin of shipment, the point of shipment to destination, whether it is cotton from the south to New England, or whether it is grain from the west or the northwest to the south, or on to the east, both of which are consuming territories of grain, if the railroads get the same out

of it, whether it is stopped and reshipped at Columbia, South Carolina, if it is cotton, or at Danville, Virginia, if it is cotton, having moved from some point further south or southeast, or if it is grain from Nebraska to Atlanta, whether it has stopped in Nashville or stopped at Lexington, or at Bowling Green or at Estill Springs or Chattanooga or Dalton, the rate is the same?

Mr. Barham: Yes sir.

Commissioner Clements: And there is one stoppage. What is the interest to the railroads as to whether it should be stopped at one place or another, so that it is only stopped once, under the same through rate?

Mr. Barham: Now, I hark right back to Nashville again. We stop it at Nashville because we cannot help it, and not because we want to. Therefore we do not stop it at other points because
681 we do not have to, and we do not want to, either. We do not want to anywhere. In other words, we would prefer to earn 26 cents by carrying a carload of grain direct from the Ohio River to Macon rather than by having to stop that car and handle it, putting it in another car, with the incidental switching and all other incidental expenses of picking it up at Nashville. We would much prefer to carry it from Peoria to Macon direct.

Mr. Baxter: I remember in the decision in this case, the former decision, something was said about reshipping privileges not being accorded to the Ohio River crossings on grain. What have you to say?

Mr. Barham: There is reshipping at every Ohio River crossing.

Mr. Baxter: Is there a shrinkage in the rate, a protection to the through rate?

Mr. Barham: It varies. They are in the shape of proportional rates, and the through rate is balanced. It depends on the territory through which the grain goes. But there is some form of reshipping at every Ohio River crossing, from Cincinnati South.

Mr. Baxter: Do you mean that is simply because that is a
682 dividing point in the rate, the Ohio River? What I want to get at is, is there any shrinkage, is there any protection in the through rate at these crossings?

Mr. Barham: Necessarily. Wherever you reship under destination there must be a shrinkage somewhere, either up to or beyond.

Mr. Baxter: At what crossings do these reshipping privileges exist?

Mr. Barham: At Cincinnati, Louisville, Evansville, Cairo, Memphis, St. Louis—all the Ohio River crossings.

Commissioner Clements: I suppose the only difference is one in form, and that is, there it is in fact two shipments. It is a shipment to the river and a shipment beyond; is it not? That is why rates are published and rates are made that way. But to meet competitive conditions, and so forth, the roads south of the river will take two or three cents, as the case may be, less than their local rate from the river and to southeastern destinations, as their share or as their rate, on traffic that has come in there from west of the Mississippi River.

Mr. Barham: To the southeast the rates, of course, base, as a rule,

on the Ohio River. There are a great many rates to the Ohio River that do not make on the Ohio River.

683 Commissioner Clements: There are through rates?

Mr. Barham: There are through rates which are considerably less than the sums of the locals.

Commissioner Clements: That is the way the grain rates are made?

Mr. Barham: The sum of the locals.

Commissioner Clements: Which is the rate to the river and the rate beyond?

Mr. Barham: To the southeast, yes. To a great deal of the territory beyond the river itself it is not the same. The rate on grain from St. Louis to Mobile is 12 cents. That is not the combination on the Ohio River by quite a bit.

Mr. Andrews: And that grain at those crossings can be stopped and treated?

Mr. Barham: And forwarded, on the basis of the through rate.

Commissioner Clements: I suppose in all of these tariffs, both north and south of the river, it is generally provided there will be but one stoppage in transit, either for elevation, with an allowance, for reshipment at the through rate——

Mr. Barham: No sir; there is no such provision in any tariff.

Commissioner Clements: That is always done; is it not?

Mr. Barham: As a matter of fact there probably would be

684 only one point at which elevation was authorized.

Mr. Andrews: But it is not limited in the tariff?

Mr. Barham: No; not in the tariff at all. You can take grain started at the Missouri River, from Omaha, which would probably go to St. Louis. It would be reshipped from St. Louis to Cairo and from Cairo to Mobile. There would be nothing unusual in that.

Commissioner Clements: Can it start in Nebraska and come to Omaha and there be reshipped?

Mr. Barham: It would get the application of a proportional rate.

Commissioner Clements: And then go to Louisville and be reshipped again at Louisville?

Mr. Barham: It would get a proportional rate from the Missouri River to Louisville, yes sir. Then it would be reshipped from Louisville.

Commissioner Clements: Now, let us get at the fact about this. You say the tariffs do not limit this. What is the fact?

Mr. Barham: The facts are we have no interest whatever in the rate up to the Ohio River. We do not ask how it is made.

Commissioner Clements: What is your information about it

685 as to what a man can do? Can he take a carload of grain from a point in Nebraska and send it through Omaha; there have it go in an elevator and out again and reshipped. Then have it go to Louisville, there have it go into an elevator and out again and reshipped. Again do the same thing at Nashville and have it reshipped, stopping at all of those points. Then what would the rate be?

Mr. Barham: Well, the rate would be 24 cents from Louisville to Atlanta. As far as we were concerned, we would have no knowledge

or information as to what had happened to the grain. There probably would be no charges on the bill or anything else. There is only one change south of the river, because it so happens there is only one reshipping point.

Mr. Wimbish: If elevated at the Ohio River it cannot be elevated again?

Mr. Barham: It can be elevated and no allowance made.

Commissioner Clements: It appeared, when this case was heard before, that there were several other things done at Nashville. As I recall there was an elevation allowance made on grain that went to a warehouse and did not get into an elevator?

Mr. Barham: That is true. The elevation is paid for a service, primarily for the transfer of grain from one car into another car. Now, we never have been able to see why at Nashville, Mr. A, owning an elevator should be paid elevation, while Mr. B, owning a warehouse, should not be paid elevation; or when an elevator ceases to be an elevator and becomes a warehouse, or when a warehouse is a warehouse and not an elevator. We know of lots of elevators that handle bulk grain and the same as to warehouses. Elevators handle sack grain and so do warehouses.

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Commissioner Clements: Are all practices and privileges, all these that were availed of and practiced there originally still in effect now—that is, before these cases?

Mr. Barham: It is most to- broad a question. We have got very rigid police rules at Nashville, antedating the Commission's own investigation in No. 1247, which will be supplemented by further suggestions made by the Commission in that decision. We are now framing a set of rules which will put in the color scheme on grain. That is, to require grain to be batched, so as not to permit the substitution of one kind or character of the same grain for another kind or character of that grain. I do not believe the rates can possibly be manipulated under the rules as they are and as they will be.

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Commissioner Clements: What do you understand by Mr. Hughes' reference to availing himself of an eight cent rate, instead of a ten cent rate from Louisville to Nashville?

Mr. Barham: From certain points in the west, west of the Indiana-Illinois line, the rates on grain to Louisville are two cents higher than they are to Cairo. They put it the other way. Rates to Cairo two cents less than the upper crossings. In order to equalize and make possible the same through rate by both crossings, upon proper evidence as to the true origin of the grain the line accept- from Louisville a proportional rate which is two cents less than the Louisville proper rate on grain so originating. In other words, it makes via Louisville precisely the same through rate to Southeastern territory as would at that time be available through Cairo. It is simply a proportional rate.

Commissioner Clements: That is a proportional rate to Nashville?

Mr. Barham: No; it applies to the Southeast—two cents less.

Commissioner Clements: On business beyond?

Mr. Barham: It does not apply only to Nashville; it applies to

the entire southeast. The proportional rate from Louisville to Atlanta is 22 cents.

688 Commissioner Clements: Would it apply on a shipment stopping at Nashville which did not go any further?

Mr. Barham: I am under the impression it does—yes; the proportional rate of 8 cents from Nashville. If it did not the Louisville gateway could not possibly draw from Illinois points to Nashville. It would go via Cairo.

Mr. Andrews: There is something in the original case about reshipping privileges on grain from Memphis. Is that still in existence?

Mr. Barham: We have dicontinued reshipping there.

Commissioner Clements: There are other points. For instance as I recollect it at the Memphis hearing, there was a question up as to the rearrangement of the tariff so as to conform to some suggestions of the Commission and its circular that related to the shipping in transit privileges, and so forth—the original ruling of the Commission which was followed by the general investigation.

Mr. Barham: Yes sir.

Commissioner Clements: And after which we made some modifications, changes, and so forth in our ruling or recommendation, not having made an order in either case. In that general inquiry at Memphis there was a reference made—perhaps Mr. Bax-

689 ter may recall to mind what was said by you and some Illinois Central people—in regard to lining up the tariffs at numerous places south of the Ohio River, at Nashville and Dyersburg was one of them. I do not remember some of the others.

Mr. Barham: I have heard of the Illinois Central reshipping at Dyersburg, but I have no personal information. We do not reach Dyersburg. The Nashville & Chattanooga Railroad has no form of reshipping on grain at any point except Nashville.

Commissioner Clements: Well, does the Illinois Central or the Louisville & Nashville, to your knowledge, or upon your information have it at other places than Dyersburg, in Kentucky and Tennessee.

Mr. Barham: Not to my knowledge. I have never heard of it anywhere else.

Mr. Compton: I will answer for the Louisville & Nashville by saying no.

Commissioner Clements: There may have been Illinois Central places. Do you know about that, Mr. Compton, where they have reshipping in Kentucky and Tennessee? Would you know about it?

Mr. Compton: No. All of the Ohio River lines reship, but the Louisville & Nashville and N. C. & St. L. reship only at

690 Nashville.

Mr. Andrews: Mr. Barham, you have been asked about elevation at Nashville. Is that a copy of the rules in regard to elevation (handing witness paper)?

Mr. Barham: As I recall it is alike made to public and private elevators, and to storage warehouses having a sackage privilege.

That is, of course, always provided that the grain has not been elevated at the Ohio River or St. Louis.

C. B. COMPTON, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination:

Mr. Baxter: You are traffic manager of the Louisville & Nashville Railroad Company, are you not?

Mr. Compton: Yes sir.

Mr. Baxter: Have you caused to be accurately prepared maps of the eastern portion of the United States, showing the railroads, navigable rivers, from the Atlantic Ocean to the Gulf of Mexico running into that section as they appeared in 1850, 1855, 1860, 1865, 1870, 1875 and 1880? If so, file copies of said maps
691 as part of your testimony, marking these exhibits Nos. 1 to 7.

Mr. Compton: I have prepared such maps, and file the same as exhibits Nos. 1, 2, 3, 4, 5, 6, and 7.

(The maps thus offered in evidence were marked "Defendants' Exhibits Nos. 1 to 7" respectively, and are forwarded herewith, attached hereto.)

Mr. Baxter: State what said maps demonstrate as to the lines of transportation which originally and naturally supplied what is now called the Southeastern Territory, with merchandise, manufactured goods, grain, grain products and hay, and all other articles of traffic, and state any other facts which relate to the question as to whether Nashville, Tennessee, was the first primary grain market in the West which supplied Atlanta, Georgia, and other points in Southeastern Territory mentioned in the petition in this case?

Mr. Compton: The maps demonstrate that the interior southeast was originally supplied with manufactured products from the East and that both the manufactured products and western products originally moved into the interior southeast via the Eastern water routes through the South Atlantic ports.

They also demonstrate that Nashville, Tennessee, was the first western market or gateway from and via which western products moved into the interior Southeast by rail.

692 Mr. Baxter: Where were the first important cities of the United States located?

Mr. Compton: The first important cities of the United States were located on salt water, on the Atlantic Ocean and the Gulf of Mexico, at the mouths of navigable streams, such as Norfolk, Virginia, Wilmington, North Carolina, Charleston, South Carolina, Savannah, Georgia, Brunswick, Mobile and New Orleans.

Mr. Baxter: As the south and west developed, where were the towns located?

Mr. Compton: As the South developed the towns were located at the heads of the navigable streams, known as trading posts. To illustrate, the trading post of Savannah was Augusta. The trading

post for Georgetown was Columbia; the trading post for the Alabama River, Mobile. Columbus, Georgia, was also a trading post at the headwaters of the Chattahoochee River.

Mr. *Compton:* Hod did traffic first seek entry into the South?

Mr. Compton: The traffic into the South first sought entry by the eastern cities. From the west the movement to the eastern cities was via Lake and canal, or Lake and rail; ocean going vessels, steam and sail, from the North Atlantic ports to the South Atlantic ports; and by rail or water to the interior. Also some of the
693 business moved from the west down the Mississippi River to New Orleans; thence by salt water, steam or sailing vessel to the Gulf ports; and from thence to the interior by navigable streams, wagon or rail.

Mr. Baxter: When was the first railroad constructed from the Southeast, from the Atlantic Coast into the interior, and what was its name?

Mr. Compton: The first railroad constructed in the southeast was from the South Atlantic Coast to the interior, at Charleston, South Carolina, extending from Charleston to Augusta, Georgia. It was completed in 1838.

Mr. Baxter: When was the Western & Atlantic Railroad completed, and between what points did it run?

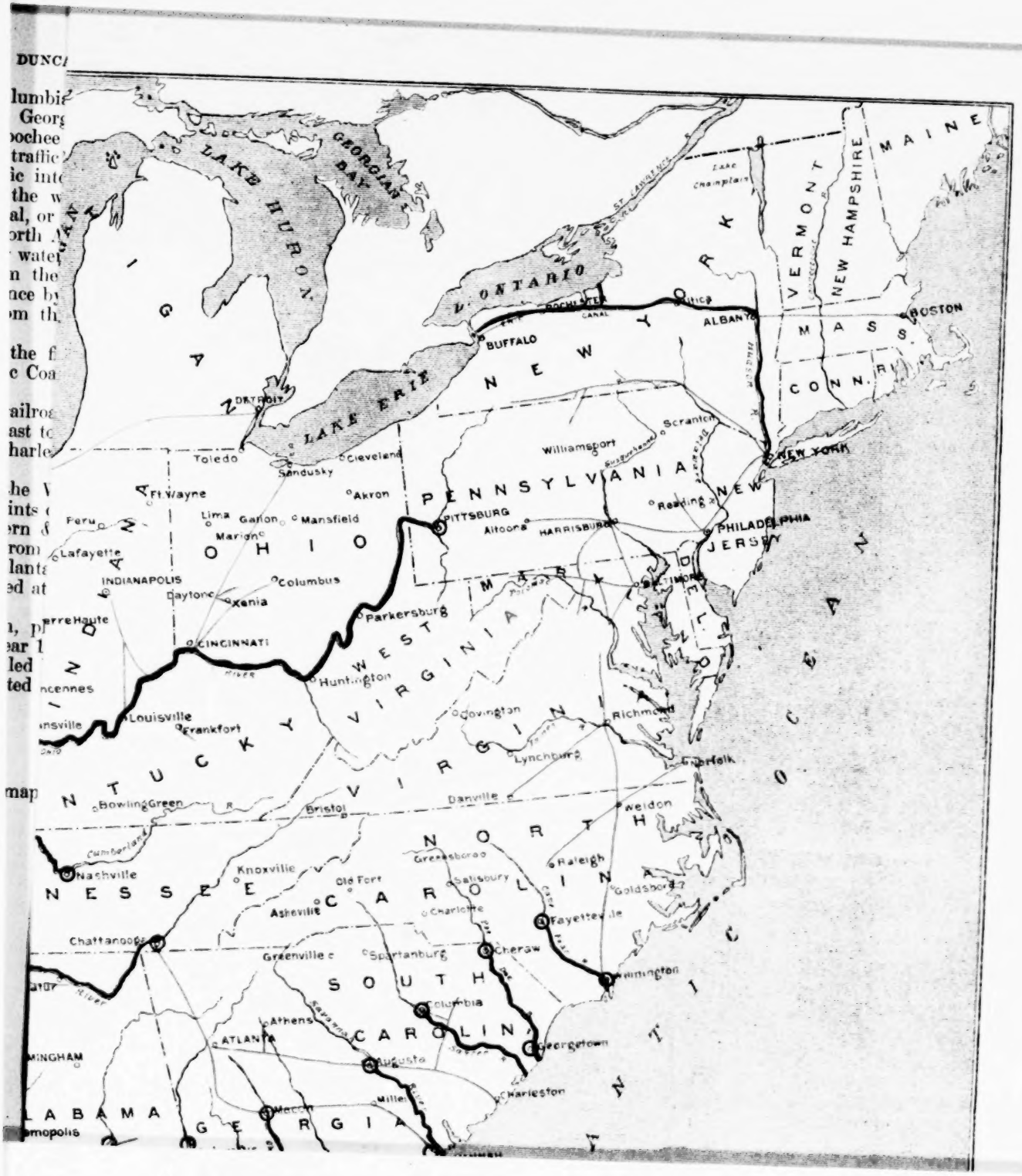
Mr. Compton: The Western & Atlantic Railroad was completed about 1850, and extended from Atlanta, Georgia, to Chattanooga, Tennessee, connecting at Atlanta, Georgia, with the Georgia Railroad, which in turn connected at Augusta, Georgia, with the South Carolina Railroad.

Mr. Baxter: Mr. Compton, please explain Exhibit No. 1, said Exhibit being map for the year 1850.

Mr. Compton: The map filed by me as Exhibit No. 1 shows the railroad situation in the United States east of the Mississippi River about the year 1850.

(Here follows map marked page 694.)

WISCONSIN
LAKE MICHIGAN
LAKE HURON
GEORGIAN BAY
LAKE ERIE
DETROIT
CHICAGO
Dubuque
IOWA
Clinton
Rock Island
Burlington
Peoria
ILLINOIS
Springfield
Decatur
Hannibal
Alton
ST LOUIS
Toledo
Cleveland
Sandusky
Akron
Ft. Wayne
Peru
Lima
Galion
Mansfield
Marion
OHIO
Lafayette
INDIANAPOLIS
Dayton
Columbus
Xenia
Terre Haute
CINCINNATI
Parkersburg
Huntington
Vincennes
Evansville
Louisville
Frankfort
KENTUCKY
Bowling Green
Bristol
Columbus
Hickman
Nashville
Knoxville
Old Fort
Asheville
TENNESSEE
Jackson
MEMPHIS
Chattanooga
Greenville
Spartanburg
Decatur
Athens
ATLANTA
Augusta
Grenada
BIRMINGHAM
Macon
Millen
ALABAMA
Demopolis
GEORGIA
MISSISSIPPI
ARKANSAS
Cairo
Ohio River
Cumberland River
Tennessee River
Savannah River


LAKE HURON
GEORGIAN BAY
LAKE ONTARIO
LAKE ERIE
ST LAWRENCE R.
Lake Champlain
ROCHESTER
Utica
ALBANY
BUFFALO
DETROIT
Toledo
Cleveland
Sandusky
Ft Wayne
Akron
Lima
Galion
Mansfield
Marion
Lafayette
INDIANAPOLIS
Dayton
Xenia
Columbus
Terre Haute
CINCINNATI
Parkersburg
Huntington
Louisville
Frankfort
Evansville
Bowling Green
Nashville
Cumberland R.
Knoxville
Asheville
Old Fort
Chattanooga
Greenville
Spartanburg
Athens
ATLANTA
Augusta
Macon
Millen
Charleston
Georgetown
Wilmington
Cheraw
Columbia
Charlotte
Salisbury
Greensboro
Raleigh
Goldsboro
Fayetteville
Weldon
Danville
Bristol
Lynchburg
Covington
Richmond
Norfolk
Williamsport
Scranton
Susquehanna R.
Reading
PITTSBURG
Altoona
HARRISBURG
PHILADELPHIA
BALTIMORE
Potomac R.
Hudson R.
NEW YORK
BOSTON
VERMONT
NEW HAMPSHIRE
MAINE
MASS.
CONN. R.
OHIO
INDIANA
KENTUCKY
WEST VIRGINIA
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
ALABAMA
TENNESSEE
PENNSYLVANIA
NEW JERSEY
NEW YORK
ATLANTIC OCEAN

WISCONSIN
MICHIGAN
LAKE MICHIGAN
LAKE HURON
GEORGIAN BAY
LAKE ERIE
LAKE ONTARIO
NEW YORK
VERMONT
NEW HAMPSHIRE
MAINE
MASS.
CONN.
IOWA
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW JERSEY
DEL.
MD.
WEST VIRGINIA
VIRGINIA
KENTUCKY
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
ALABAMA
MISSISSIPPI
ARKANSAS
MISSOURI
ATLANTIC OCEAN
Dubuque
Clinton
Rock Island
Burlington
Peoria
Springfield
Decatur
Hannibal
Alton
ST LOUIS
CHICAGO
DETROIT
Toledo
Sandusky
Cleveland
Akron
Ft. Wayne
Peru
Lima
Galion
Mansfield
Marion
Lafayette
INDIANAPOLIS
Dayton
Xenia
Columbus
Terre Haute
CINCINNATI
Parkersburg
Huntington
Vincennes
Evansville
Louisville
Frankfort
Covington
Lynchburg
Richmond
Norfolk
Cairo
Columbus
Hickman
Bowling Green
Bristol
Danville
Weldon
Nashville
Knoxville
Old Fort
Asheville
Greensboro
Salisbury
Charlotte
Raleigh
Goldsboro
Fayetteville
Jackson
MEMPHIS
Chattanooga
Greenville
Spartanburg
Cheraw
Wilmington
Decatur
Columbia
Athens
ATLANTA
Augusta
Georgetown
Grenada
BIRMINGHAM
Charleston
Millen
Macon
Demopolis
Selma
Montgomery
Columbus
SAVANNAH
Jackson
BUFFALO
ALBANY
BOSTON
Champlain
Williamsport
Scranton
Reading
PITTSBURG
Altoona
HARRISBURG
PHILADELPHIA
BALTIMORE
Erie Canal
St. Lawrence
Hudson

695 Mr. Baxter: As I understand Exhibit No. 1, it shows, does it not, that in 1850 the only rail routes entering the southeast extended from Charleston, South Carolina, to Columbia, South Carolina, and from Charleston, South Carolina, via Augusta, Georgia, and Atlanta, to Chattanooga, Tennessee, and from Savannah, Georgia, via Macon and Atlanta, to Chattanooga, Tennessee.

Mr. Compton: That is correct.

Mr. Baxter: At that time, 1850, there was no all-rail connection between Nashville and the Southeast, nor between the east and the southeast, was there? And the only rail connection into the interior southeast was from and through the eastern seaboard cities via the South Atlantic ports to Charleston and Savannah, and then by rail into the interior? Is this or not correct?

Mr. Compton: Yes sir; the facts stated by you are correct.

Mr. Baxter: If at this time any grain was shipped from the west to Atlanta and the other interior southeastern points mentioned in the petition in this case, how was said grain transported?

Mr. Compton: All grain shipped into the interior southeast from the west at that time moved through the north Atlantic ports,
696 through the cities of New York, Philadelphia, or Baltimore; thence via ocean to the South Atlantic ports; and was distributed from the South Atlantic ports to the interior either by rail or wagon or by boat.

Mr. Baxter: Now, please explain Exhibit No. 2, being map for the year 1855.

Mr. Compton: The map filed as Exhibit No. 2 shows the railroad situation in the United States east of the Mississippi River, as it existed in 1855.

(Here follows map marked page 697.)

Mr. Baxter: Is it not a fact that Chattanooga and the interior southeast were connected by rail with the Cumberland River, at Nashville, Tennessee, in 1854 by the completion of the Nashville & Chattanooga Railway?

Mr. Compton: Yes sir. By the completion of this road Nashville became the first original western gateway through which grain and other western products, produced in the northern and western states, moved into the interior southeast; such traffic being carried down the Ohio and Mississippi Rivers, up the Cumberland River to Nashville, and thence transported by rail.

Mr. Baxter: Is it not a fact that Chattanooga, Tennessee, and the interior southeast were connected by rail with the Mississippi
698 River at Memphis in 1858, by the completion of the Memphis & Charleston Railway?

Mr. Compton: Yes sir.

Mr. Baxter: Prior to the construction of the Nashville & Chattanooga Railway and the Memphis & Charleston Railway, how did traffic of every kind and description originating in the Northwest, find its way to points in southeastern territory?

Mr. Compton: Prior to the construction of the Nashville & Chattanooga Railway and the Memphis & Charleston Railway, the traffic originating in the Northwest consisting of provisions, rope, bagging, etc., found its way south in circuitous channels dividing up between the various railroad, canal, lake and river lines leading to Baltimore, Philadelphia, New York, Boston and New Orleans, and thence by steamships and sail vessels to Charleston, Savannah, Mobile, and some minor ports and from these depositories was sent by river, rail, and wagon into the interior.

Mr. Baxter: After the opening of the Nashville & Chattanooga Railway and the Memphis and Charleston Railway, is it not a fact that a part of the traffic was diverted to the more direct routes?

Mr. Compton: Yes sir.

699 Mr. Baxter: And was moved via the Ohio, Mississippi, Cumberland and Tennessee Rivers to Nashville, Memphis, and so forth, and thence by rail to Chattanooga?

Mr. Compton: Yes sir.

Mr. Baxter: And the southeast?

Mr. Compton: Yes sir.

Mr. Baxter: When was Chattanooga and the Interior Southeast connected by rail with the Ohio River at Louisville?

Mr. Compton: It was connected November 1, 1859, by the completion of the Louisville & Nashville Railroad, from Louisville to Nashville.

Mr. Baxter: What was the result, now, Mr. Compton, of the opening of the Louisville & Nashville Railroad upon the concentration of a large volume of western traffic at Louisville?

Mr. Compton: The result of the opening of the Louisville & Nashville Railroad, from Louisville to Nashville, in 1859, was to concentrate at Louisville, and via the Louisville gateway, a vast amount of western business, for transportation into southeastern territory via the Nashville gateway.

Mr. Baxter: The Louisville & Nashville Railroad immediately entering into active competition with the previously used transportation routes for the transportation of this traffic into the
700 interior Southeast, was compelled to adjust its freight rates from Louisville to Nashville and the southeast so as to meet that competition?

Mr. Baxter: The Louisville & Nashville Railroad, upon the completion of its line to Nashville, undertook, as Railroads do, when they are constructed, to establish a line on a set of rates to be used for the transportation of property between any and all of those points. Its local scale was produced for 185 miles, the distance from Louisville to Nashville at, according to my recollection, about 70 cents per hundred pounds. The competition of boats in the Ohio and Mississippi Rivers, running from Pittsburg, Cincinnati, Louisville, Cairo, St. Louis and New Orleans, had the effect of concentrating upon the river route a majority of the business. In order for the Louisville & Nashville Railroad to compete for the transportation of this business it necessarily reduced its rate from Louisville to Nashville and the Southeast in order to compete with the transportation of any business at all, whether it immediately came from Louisville or came from beyond Louisville. That is the first time in the history of our company that it was found necessary to make a rate lower for the longer haul than the short haul over the same line and in the same direction. That principle of mak-
701 ing rates to meet competition has continued over the entire southeast, since the first time this competition was met by the Louisville & Nashville Railroad from Louisville to Nashville in the Ohio and Cumberland Rivers. That competition did not rest at Nashville. The Nashville & Chattanooga Railroad had been completed to Nashville in 1854. The completion of the Louisville & Nashville Railroad in 1859 formed the first through route for the transportation of property from Louisville to the entire southeast which was then served by railroad transportation facilities. The completion extended from Louisville through Nashville over the whole route to the destination in the southeast. That competition was influenced, or in fact, controlled, because of the fact that the competition in the Ohio and Cumberland Rivers to Nashville, produced rates which added from Nashville, produced a lower total rate than would ordinarily apply; hence it is true that the competition extended through from the Ohio River to the destination—Atlanta, to illustrate. It was true then, as now.

Mr. Baxter: Please explain Exhibit No. 3, being the map for the year 1860?

Mr. Compton: The map for the year 1860 shows the railroad situation in the territory east of the Mississippi River at that time.

(Here follows map marked page 702.)

703 Mr. Baxter: As I understand Exhibit No. 3, it shows, does it not by the year 1860 Chattanooga, Tennessee, and the interior Southeast had all rail connection with the eastern and Virginia cities, via Bristol, Tennessee, and Lynchburg, Virginia, and with the Mississippi River at Memphis and the Ohio River at Louisville; and that there had been considerable additional railroad development in the territory north of the Ohio River, in the interior Southeast and in the Mississippi Valley?

Mr. Compton: Yes sir; and I might add that it shows also that the Vicksburg & Meridian Railroad had been completed from Vicksburg to the Southeast, through Meridian, Demopolis, and Montgomery.

Mr. Baxter: Please explain Exhibit No. 4, which is the map for the year 1865.

Mr. Compton: The map for the year 1865 shows about the same information as the map for 1860.

Mr. Baxter: That was on account of the war?

Mr. Compton: This was the war period. There are but few changes, and altogether the map is substantially the same for 1860 as for 1865.

(Here follows map marked page 704.)

In making this map it was done for the purpose of showing the development of transportation facilities in the United States
705 in the territory served by the railroads, to show the history of the development in five year periods. I believed when I had the work done that a history brought up in periods of five years, from 1850 to the completion of the Cincinnati Southern Railroad in 1880, would be fairly representative and show in picture form the fact that this railroad development which is pictured, was of considerable value in showing the reasonableness of the adjustment of rates generally in the Southeast, and especially in regard to the competition of the Cumberland River at Nashville.

Commissioner Clements: Mr. Compton, it is a very minor matter, but idle curiosity causes me to ask you if the road from Thomasville, Georgia to Savannah was built during the War? I see it on the map of 1865, but I do not see it on the map of 1860.

Mr. Compton: On the map of 1860 you will find the road was started southwest from Savannah and had crossed Altamaha River, in the direction of Thomasville. For 1865 it shows that the line had been completed from the point in the vicinity of the Altamaha to Thomasville. The authority for the construction of these maps was Poor's manual, commencing at 1850, and reading, mapping and marking down progressive steps shown in the
706 succeeding issue. It is as near as it was possible to get.

Commissioner Clements: Of course that is not of any consequence here. I was merely curious to know.

Mr. Compton: I think they were so poor in that country they did not have money enough to buy anything, much less a railroad.

Commissioner Clements: I doubt very much that it was built during that time; but it is wholly immaterial.

Mr. Compton: The record shows it was completed at that time, and that the railroad was in actual operation in 1865.

Commissioner Clements: There is no doubt about that; it was there then.

Mr. Baxter: Please explain Exhibit No. 5, the map for the year 1870.

Mr. Compton: Exhibit No. 5, which is the map for the year 1870, shows the railroad situation east of the Mississippi River at that time.

(Here follows marked page 707.)

Mr. Baxter: As I understand Exhibit No. 5, it shows, does it not, that by the year 1870, Chattanooga, Tennessee, and the interior Southeast, were connected by all-rail routes with the Ohio River at Cincinnati, Ohio, (via Louisville), Louisville, Kentucky, and Evansville, Indiana, and with the Mississippi River at Columbus, Kentucky, Hickman, Kentucky, Memphis, Tennessee, Vicksburg,
708 Mississippi, and New Orleans, Louisiana?

Mr. Compton: Yes sir.

Mr. Baxter: Please explain Exhibit No. 6, being map for the year 1875.

Mr. Compton: Exhibit No. 6 shows the railroad situation east of the Mississippi River for 1875.

Mr. Baxter: It shows, does it not, that by the year 1875 what is now part of the Illinois Central Railroad has been extended north to Cairo, Illinois, and that St. Louis, Missouri, had been given all rail connection with the southeast, both via Cairo, Illinois, and via Evansville, Indiana?

Mr. Compton: Yes sir.

Mr. Baxter: Please explain Exhibit No. 7, map for the year 1880?

Mr. Compton: Exhibit No. 7, which is the map for 1880, shows the railroad facilities east of the Mississippi River at that period.

(Here follow maps marked pages 709 and 710.)

Mr. Baxter: When was the Cincinnati Southern Railway opened for traffic between Cincinnati, Ohio, and Chattanooga, Tennessee and points south?

Mr. Compton: It was opened up in 1880.

Mr. Baxter: Do you remember the month?

711 Mr. Compton: I think it was February.

Mr. Baxter: You have shown in detail the historical development of the transportation routes between the West and the interior Southeast. Was not the resultant effect of this development of new and competing routes of transportation to gradually intensify competition for the movement of western products, and especially grain, from the various western primary markets to the various interior southern cities; and to also gradually lower the transportation charges on all of that traffic?

Mr. Compton: Yes sir.

Mr. Baxter: Were not the through routes operated from St. Louis, Louisville &c., to Atlanta and other interior southern cities via Nashville engaged in competition with all of these other routes for the movement of this traffic and affected by the competition of these other routes?

Mr. Compton: Yes sir.

Mr. Baxter: Were they not also affected by competition with the boats in the Cumberland River for the movement of traffic from Louisville, St. Louis &c., to Nashville and via Nashville to the interior southeast?

Mr. Compton: Yes sir.

712 Mr. Baxter: Now, Mr. Compton, when the Louisville & Nashville railroad and the Nashville, Chattanooga and St. Louis Railway first allowed the practice of reshipping of grain at Nashville, what conditions did they find at Nashville relative to the handling and transportation of grain from the Ohio and Mississippi River crossings to points in Southeastern Territory?

Mr. Compton: They found large quantities of western grain being transported by boats into Nashville. It was of such volume that naturally it became very attractive to the railroads to compete for, which they undertook to do.

Mr. Baxter: You said into Nashville. This is grain that was being transported by boats into Nashville, and which went on to the southeast?

Mr. Compton: This grain, transported by boats into Nashville, was reshipped at Nashville to the southeast. It was a movement of business from the Ohio River points to the northeast, which if the railroads were to compete for it at all, had to be handled by the rail lines themselves to Nashville and from Nashville to the Southeast in competition with the boats.

Commissioner Clements: Right on that point, here is a question which goes to your testimony in general here. I suppose that much of this historical statement of the development of business,

713 of the practices of carriers and of the methods of handling and reaching out for the business, and so forth, is not within your personal knowledge. What are your sources of information?

For instance, when you say there were large quantities of grain assembled by the river and through the river at Nashville, seeking an outlet to the southeast, when the railroad got there, just for the purpose of a clear understanding as to the situation there and the sources of information, how do you know that?

Mr. Compton: I know that in this way: I took service with the Louisville & Nashville the first of August, 1871. I have been in continuous employment since that time. I know this of my own personal knowledge from the time that I was made a clerk in the office at Louisville. That is a period of 39 years. If it existed before that time, which I think it did, I feel that it is fair for me to say that it has existed since 1870, or since the railroad was completed into Nashville. If this thing existed when I went to work for the company it must have existed before. Because why? Because the rates from Louisville to Nashville would not have been reduced unless the competition was there. The competition does not show itself after the railroad has put the rate in. The competition
714 showed itself first and the railroad reduced the rate to Nashville.

Commissioner Clements: The railroad got there about 1859, I believe?

Mr. Compton: Yes sir.

Commissioner Clements: Now, I am not disputing the correctness of this thing at all?

Mr. Compton: I understand.

Commissioner Clements: But just simply to inquire the source of your information: I assume it is within the knowledge of a good many of us that it was not as fashionable in those days for the southeast, or what we now call the southeast, all of it, to supply itself with grain, wheat, corn and hay, and so forth, from the west. Tennessee, North Georgia and a great deal of Alabama produced its own, produced wheat and corn and grain of all sorts, and hay, during that period, and did not buy from the west. Of course still further southwest in the strictly cotton country I suppose they did, so far as they could get it. There was undoubtedly a good deal of traffic there then, but nothing like the volume which had come into existance at the time you became connected with the Louisville & Nashville Railroad in 1870, perhaps. What do you think about that? I will not say you are as old a man as I am, but probably do not lack
715 much of it. Is it not true that since the war the great volume of the present movement of grain to the southeast, as we now call it, has grown up?

Mr. Compton: Well, of course in the primary stage, when people first went to Georgia and the other southern states they had to carry their rations with them. They gradually got to scratching the ground and raising a little corn and other stuff to subsist upon; and later they commenced to consume more than they produced, compelling them to go outside for it. Naturally they came to the west. I think probably some of the business went from the eastern states which first developed.

As the country has developed in population, in wealth, in trans-

portation facilities at cheap rates, it has become fashionable, I think it is fair to say, for them to go outside more for these products than they did before. But as to the extent it is true that there is more business moving into that country year by year than ever before, whether or not it is true relatively, I do not know. That could only be ascertained by finding out the total production of the cereals in the State of Georgia and other Southern States, and the amount that goes in from year to year.

716 Commissioner Clements: I suppose there are no statistics available as to the value of this business in 1859, or any such period as far back as the maps, via Nashville, over the Cumberland River?

Mr. Compton: I think not.

Commissioner Clements: And the cotton area was much more nearly confined to the coast in those days, in the fifties, than it is now. I guess Tennessee bought very little corn from the west up to that time—west Tennessee, and so forth. They made so much of it themselves, and so did North Alabama and North Georgia. I presume a whole lot of it found its way one way and another around into the Carolinas and Southern Georgia, around Mobile, and in Louisville, Perhaps. But it seems that the use of commercial fertilizers, and one thing and another, has pushed it further north than it used to be. Take the corn crops in Tennessee, north Georgia and so forth. The movement in 1859 must have been very small compared to what it is now, through Nashville.

Mr. Compton: I am sure that the movement of grain to Nashville, using an illustrative period, say from 1860 on to 1880, was greater in volume than it is today, by river to Nashville. The movement to Nashville over a period of years by water has greatly decreased in volume relatively, but still it is true that the Cum-

717 berland River, from the Ohio River and from the Mississippi River, is the measure of all rates that can be assessed by the railroads at Nashville, and the measure of the rates that can be assessed from the Ohio River to Atlanta, to illustrate. That is not only true of grain, but it is true of other commodities.

Commissioner Clements: You stated one other historical fact a while ago, and that was that the first deviation from the long and short haul rule, as we now understand what that means, was from Louisville to Nashville when the Louisville & Nashville got in there, and so forth. What is the source of that information.

Mr. Compton: You use the word deviate. I do not know whether I used that or not. If I did, I should not have used it.

Commissioner Clements: I do not know that you did. We mean the same thing—to charge more for the short haul than for the long haul.

Mr. Compton: Yes. My information about that is the record of the Louisville & Nashville Railroad, which I had occasion to look over some three or four years ago. It is a matter of record.

718 Commissioner Clements: How is it expressed? Did you find a public tariff which indicated that?

Mr. Compton: No. It is expressed in a meeting of the board of directors of the Louisville & Nashville Railroad. I gave it in testi-

mony before this Commission in a case known as the Kendallville, Indiana-Gallatin case. I related that circumstance at that hearing in Chicago. The wording is the same, according to my recollection, in that testimony, as it is in the minutes of the Board of Directors.

Commissioner Clements: Did the Board of Directors act on the question?

Mr. Compton: Yes. I found, Mr. Commissioner, in looking over the old records that in the early days the superintendent or the general superintendent was the commanding officer of the railroad, and whenever he charged the rates he had to get authority from the Board of Directors about it, it had to be ratified by them.

Commissioner Clements: The traffic manager was not possessed with such authority as he has now?

Mr. Compton: Well, we have not got much now.

Mr. Baxter: That resolution is set out in the testimony in that case.

719 Was not the desire of the rail lines operating through Nashville to effectively meet the competition of these Cumberland River boats the real reason for the original allowance of the reshipping arrangement on grain at Nashville, on traffic originating at points north and west and destined to the southeast?

Mr. Compton: Yes sir.

Mr. Baxter: Now, please give a history of the practice of shipping grain at Nashville, Tennessee, when originating at Ohio and Mississippi River crossings, and points north and west thereof, and destined to points in southeastern territory?

Mr. Compton: I am speaking now from the records of the Louisville & Nashville Railroad. They show that the practice of reshipping, or rebilling, as it was formerly called, at Nashville, Tennessee, is very old. The Louisville & Nashville railroad, it is true, was completed into Nashville in 1859. It did not, according to our records, engage in reshipping at Nashville until about 1877. In fact, the records show almost from the time of the opening of the line that the Louisville & Nashville was called upon to protect its revenue against the competition of boats in the Cumberland River. In order to do so the rates from Louisville to Nashville were reduced as early as 1860 so as to be radically lower than the

720 regular scale of rates applied to intermediate local stations. But in addition to reducing and changing from time to time the rates from Louisville to Nashville proper, to meet the exigencies of the boat competition, it was early found necessary to establish rebilling arrangements at Nashville on western products when destined to the southeast, so as to control the movement of that traffic as against the boats.

Nashville is a natural location for milling plants, located in the center of probably the most productive section of Tennessee, and within a few miles of the richest wheat section of Kentucky. Its situation on the Cumberland River also makes it one of the natural points for the marketing of wheat and corn grown on the Cumberland River grain belt, which crops can be and are marketed at Nashville without any dependence upon rail lines. Its location on the Cumberland River, giving it access and efficient means of transporta-

tion to and from the entire western country, makes Nashville so far as Southeastern territory is concerned not an interior Southeastern point, but a western distributing point. This has always been recognized and the rates from Nashville on all classes specially western cerals and food products to the territory have always been adjusted with that fact in view. The rates from Nashville to Birming-
721 ham, Montgomery and Selma, to Chattanooga, Atlanta and Macon and to the Carolinas, Georgia, and Florida, have been made not with relation to the rates from Birmingham and from Chattanooga and Atlanta to those points, but with relation to the rates from St. Louis, Louisville and Evansville. In 1877 the L. & N. Railroad Company established rules for the handling of grain from Nashville to Southeastern territory on grain brought into Nashville from the west. Elaborate rules and regulations were also established between the L. & N. Railroad and the N. C. & St. L. Railway, effective May 17, 1878. The principle underlying those rules has been followed ever since. The rules have been revised from time to time so as to secure uniformity of practice and protcetion of revenue.

The subsequent history of the reshipping arrangements at Nashville while voluminous simply relates to changes and revisions in the rules and regulations under which the reshipping was conducted and in changes in the territories of origin and destination, but the fundamental principle of reshipping western products at Nashville in order to meet the Cumberland River competition has never been departed from. It has been consistently observed for some forty years.

This is from the records of the Louisville & Nashville Rail-
722 road. As stated before, the previous record belongs to the Nashville & Chattanooga Railroad, as they were first to indulge in the practice.

Mr. Baxter: From your personal and acquired knowledge, after thorough investigation as to the conditions and circumstances at Nashville relative to the transportation of grain from the Ohio and Mississippi Rivers crossings and from points beyond, state whether or not the establishment of the reshipping arrangements at Nashville by said companies was or was not arbitrarily established by those companies?

Mr. Compton: The reshipping arrangements on grain at Nashville were not arbitrarily established by the Louisville & Nashville Railroad, nor in my opinion by the Nashville, Chattanooga & St. Louis Railway; that is using the word "arbitrary" in the sense of without reason or justification. This is forced competition. There is no favoritism in it. These arrangements were not made to favor Nashville as against any other point. There is no undue preference, according to my belief. I do not believe that reshipping would ever have been inaugurated at Nashville except that the conditions surrounding Nashville in a geographical sense forced it upon the railroads.

723 Mr. Baxter: You say it was not arbitrarily established and that it was forced by competition. As I understand you,

then, this arrangement was originally established to meet those competing roads there at Nashville, and the boat competition on the Cumberland River?

Mr. Compton: I stated a while ago that the reshipping arrangements at Nashville were not arbitrarily established; it was necessary to establish them. The reshipping arrangements were an economic necessity, because they constituted the best method available for controlling for the railroads leading from St. Louis and Louisville and other western points to Nashville, the movement of grain from the west to the southeast via Nashville as against the boats in the Cumberland River; and of conserving the revenues of the railroads on so much of the grain as was brought by them from the west to Nashville and consumed locally.

Mr. Baxter: How did the establishment of this reshipping arrangement enable the railroads to meet the boat competition in the Cumberland River for the movement of this grain?

Mr. Compton: Since the reshipping arrangements referred to are only granted to such Nashville shippers as bring their grain into Nashville by rail and are only applied to such, those
724 arrangements naturally constitute a powerful inducement to the Nashville shippers to use the rail lines into Nashville instead of the river.

This inducement, of course, only affects such Nashville shippers as desire to do business in the territory south or southeast of Nashville, and not such shippers as do a strictly Nashville local business.

The advantages given to the railroads in their competition with the rivers by the establishment of these reshipping arrangements at Nashville were great and the reshipping arrangements were and are a real and substantial competitive force. A specific illustrative example of the value of the reshipping arrangements to the railroads in meeting the competition afforded by the location of Nashville on the Cumberland River is as follows: Suppose a grain dealer located in Nashville should desire to sell a given amount of grain in Atlanta, Georgia, in competition with a dealer located at some other market, such as Cairo, Illinois, for instance, and suppose that both brought their grain through Cairo.

On basis of present tariffs, the rate from Cairo to Atlanta on grain is 24 cents per hundred pounds; the rail rate from Cairo to Nashville is 10 cents per hundred pounds, and the rate from
725 Nashville to Atlanta is 17 cents per hundred pounds. If the Nashville shipper brought his grain into Nashville from Cairo by river, he would be compelled to pay the cost of the transfer plus the boat or barge charges at Nashville, plus the cost of transferring the grain from the wharf at Nashville to the elevator, warehouse or depot at Nashville, plus the Nashville proper rate of 17 cents per hundred pounds to Atlanta, and the total aggregate charges so arrived at would under present conditions be perhaps in excess of the Cairo to Atlanta rate of 24 cents per hundred pounds, which his competitor shipping direct would pay. If, on the other hand, he shipped his grain into Nashville from Cairo or beyond by rail and later shipped it to Atlanta he would receive through the re-

shipping arrangements the benefit of identically the same freight rate as his Cairo competitor receives, and would, therefore, be in a position to compete on an equal basis with the Cairo dealer for the sale of the grain in Atlanta.

Under these circumstances, he would naturally prefer to use the railroads rather than the rivers.

Again, a Nashville shipper using the river from Cairo to Nashville would be under a like disadvantage in competing with another Nashville shipper using a railroad from Cairo to Nashville.

726 Even were the total charges which the Nashville shipper using the rivers would be compelled to pay on the through movement of his grain from Cairo to Atlanta, as low as or less than the total charges which his competitor at Cairo shipping direct to Atlanta or his competitor at Nashville shipping by rail from Cairo to Nashville and thus obtaining the benefit of the Cairo to Atlanta rate, on reshipment to Atlanta, would pay, he would still be at the same disadvantage because of the quicker transit and superiority of service which his competitors using the railroads would enjoy.

Therefore, the Nashville shippers have not only to meet the competition of shippers at the various Ohio and Mississippi River crossings but to meet the competition among themselves and are, so long as they have the reshipping arrangements strongly impelled to use the rail carriers into Nashville for the transportation of so much of their grain as they desire to sell further south.

Mr. Baxter: Please explain what effect the establishment of reshipping arrangements has had upon the boat competition for the transportation of grain to Nashville proper?

Mr. Compton: There is naturally a large consumption of grain in Nashville proper and as to a large portion of this the rivers and the railroads were and are equally available.

727 The sources of supply of the grain consumed in Nashville proper are three:

First. The vicinity of Nashville from which the grain is carried into Nashville by wagon or rail;

Second. The Cumberland and Ohio River Valleys, from which the bulk of the grain is carried into Nashville by boat; and

Third. The various Ohio and Mississippi River crossings and the great grain producing sections located north and west thereof.

It is only the grain having this latter source for the movement of which the railroads are in competition with the boats in the Cumberland River, and as, after deducting the grain grown in the territory contiguous to Nashville and that produced in the Cumberland and Ohio River Valleys from the total amount consumed in Nashville, locally, the remainder is of comparatively small volume, it follows that there was not and is not enough of such traffic to justify any large number of boats competing therefor or to any great extent. This on the principle that the smaller the volume of traffic moving the more expensive it is to handle per unit.

Therefore, the establishment of the reshipping arrangements at Nashville for such grain as originated at and north and west

728 of the various Ohio and Mississippi River crossings and as brought into Nashville for the purpose of reshipping to the

south, but it incidentally had the effect to a large extent of driving the boats out of competition for such of said grain as was intended for Nashville local consumption and through this latter result the railroads were and are able to maintain higher rates on grain from the various Ohio and Mississippi River crossings to Nashville, Tennessee, proper when consumed locally than they could otherwise charge.

Mr. Baxter: The rates from Nashville to the *southest* on grain are 7 cents per hundred pounds less than from the Ohio River, while the rate to Nashville proper is 10 cents per hundred pounds.

Please explain why, if a 7 cent differential between the Ohio River and Nashville is necessary to prevent traffic moving via boats into Nashville, this same rate is not necessary to Nashville proper?

Mr. Compton: It is true that a certain amount of grain or articles taking grain rates can be and are carried by boat into Nashville as against a rail rate of 10 cents, but having fixed the Nashville proper rate at 7 cents below the Evansville, Cairo or Louisville rate,
729 it has been found in practice that this adjustment does not now hold out any inducement for the boats to take grain from western points into Nashville, and deliver that traffic to the L. & N. Railroad or N. C. & St. L. Railroad to be forwarded from Nashville at the Nashville proper rate to southeastern territory. A higher differential than this, say 10 cents under the Ohio River rates, or even 8 or 9 cents might leave the boats sufficient revenue to actively compete for this class of traffic from all western points. The present adjustment holds out no inducement for the boats to enter the Cumberland River trade and actively compete for this large volume of business between the West and the Southeast. In addition to this, when we arrange with Nashville millers and Nashville grain dealers to handle their freights into Nashville from the West all rail, paying us 10 cents per hundred pounds, undertaking to protect the net differential of 7 cents in event of the same being reshipped as grain or milled products, still another inducement for the boats to compete is thereby withdrawn.

If the differential from Nashville under Louisville to Atlanta and Montgomery territories was increased to the extent of the increase in the differential, the rate from the Ohio River to Nashville
730 would become involved on account of the water competition. If you reduce the differential from Nashville under the Ohio River, the opportunity is still left available to the boats. For instance, the differential, Nashville under Louisville to Atlanta, is 7 cents per one hundred pounds; to South Atlantic Coast points the differential from Nashville under Louisville is 6 cents per hundred pounds, with a varying differential to Carolina points.

Commissioner Clements: How do you account for the fact that the boats seem to favor the continuation of a practice which eliminates them from participation in this southeastern business?

Mr. Compton: I do not understand that the river men do favor any such proposition. I understand the river men simply stated facts in connection with the movement of the business.

Commissioner Clements: The river man who was on the stand yesterday said he was in favor of it.

Mr. Compton: The river man is in competition with the rail line to Nashville.

Mr. Baxter: I think I can explain that. You have reference to Captain Gallagher?

Commissioner Clements: Yes.

731 Mr. Baxter: He said he favored the reshipping of grain at Nashville for the reason it was an inducement for them to deliver to him at the landings along the river which were not reached by the rail carriers more corn and more grain from which they were able to make up cargoes to Nashville. In other words, where it did not come in direct competition with the railroads the boat lines could get more corn and could get more grain for the purpose of taking to Nashville to reship at Nashville. They give such river rates into Nashville that added to the 17 cent local south, they are enabled to get south in competition with our grain. Some of the grain goes in there as low as four cents.

Mr. Wimbish: That would be true if they were reshipping by rail.

Mr. Baxter: But it creates a concentrating market. That is the reason he said it. That is the way I understood it.

Mr. McConnico: He used the general expression that it made the general market more attractive.

Mr. Baxter: Has the establishment of reshipping at Nashville entirely eliminated the boat competition in the Cumberland River?

Mr. Compton: No sir.

732 Mr. Baxter: State whether in your opinion if all the grain that is reshipped from Nashville to Atlanta and the other points mentioned in the petition in Southeastern Territory, which passes from Evansville and the other Ohio River crossings were given to the Ohio River transportation companies to be transported from said Ohio River crossings to Nashville, could such grain be transported upon the river at such rates in connection with the 17 cent local rate on such grain from Nashville to Atlanta as would enable shippers of grain at Nashville to have such grain transported at river rates which added to the 17 cent local rate would be less than or equal to the through rate of 24 cents per hundred pounds, to illustrate, from Evansville, Indiana to Atlanta, Georgia?

Mr. Compton: I don't think there is any doubt whatever but that the boat lines could afford to make their rates on grain from the Ohio River crossings to Nashville lower than the present difference of 7 cents per 100 pounds, and thus reduce the through rates from the Ohio River to the Southeast if all the grain moving were concentrated upon the river routes.

Mr. Baxter: State whether in your opinion Atlanta and the other points mentioned in the petition are unduly discriminated against by virtue of the fact that reshipping arrangements in effect at Nashville on grain originating at and beyond the Ohio River,

733 when shipped to Nashville and destined to points in Southeastern territory while such arrangements are not made at

Atlanta and said other points mentioned, and give your reasons fully and in detail for any opinion you may express?

Mr. Compton: I do not think that Atlanta or the other interior southern jobbing cities mentioned in complainant's petition in this case are unduly or unjustly discriminated against by reason of the fact that reshipping arrangements are in force at Nashville, Tennessee, on grain originating at and beyond the Ohio River and destined to points in Southeastern territory.

I will go further and say not only do I not believe that Atlanta and other interior points are unduly discriminated against but will say that they are not discriminated against at all by reason of the establishment of these reshipping arrangements at Nashville.

For the purpose of illustrating my meaning, we will take grain as the representative commodity; Cairo, Illinois as the representative point of origin, and Atlanta as the representative point in the Southeast.

It was shown at a previous hearing of this case, and I now repeat that an Atlanta shipper who buys grain at the various Ohio and Mississippi River crossings and ships it to Atlanta pays identically the same transportation charges as does the Nashville reship-
734 per who buys from the same points and reships said grain from Nashville to Atlanta.

To illustrate:

The following are the rates on grain from Cairo to Atlanta when shipped direct and when shipped to Nashville and subsequently reshipped.

In Cents per Hundred Pounds.

When shipped direct.	When shipped to Nashville and reshipped.
24	24

Therefore, the Atlanta shipper is at no disadvantage as compared with the Nashville reshipper as to grain sold in Atlanta proper.

It was also shown that when a shipper located at Atlanta purchases grain at some one of the various Ohio and Mississippi River crossings and ships it to Atlanta and later reforwards it to a point in the vicinity of Atlanta to which the through rates from the various Ohio and Mississippi River Crossings are made on basis of Atlanta combination, he pays exactly the same total charges as are paid by the Nashville reshipper that purchases his grain from the same origin and reships to Nashville to the same direction.

735 To illustrate:

The following are the rates on grain from Cairo to Social Circle, Georgia, 52 miles east of Atlanta, when shipped direct, when shipped to Nashville and subsequently reshipped and when shipped to Atlanta and subsequently reshipped.

In Cents per Hundred Pounds.

When shipped direct.	When shipped to Nashville and reshipped.		When shipped to Atlanta and reshipped.
32	32	To Atlanta	24
		B'y'd	8
		Total.....	32

Therefore the Atlanta shipper is not at any disadvantage as compared with the Nashville reshipper as to grain handled by him to points in the territory contiguous to Atlanta to which the rates from the Ohio and Mississippi River crossings are based on Atlanta combination.

Mr. Wimbish: Will you illustrate that by Griffin?

Mr. Compton: Yes, I will later on.

Mr. Baxter: Let him finish first.

Mr. Compton: We can discuss the Griffin question now as well as any other time.

736 Commissioner Clements: If it will interrupt your course, go ahead.

Mr. Compton: I would rather take the continuity of this, and I will be very glad afterwards to consider the Griffin and Noonan question with you.

It was also shown that to local points in Georgia during a given period, Atlanta reshipped three times as much grain as did Nashville to the same points.

Therefore, the Atlanta shipper is not at any disadvantage as compared with the Nashville reshipper in handling grain to such points.

It is true that the Atlanta shipper is at a disadvantage as compared with the Nashville reshipper in handling business to points to which the through rates from the Ohio and Mississippi River crossings are lower than the Atlanta combination.

This may best be illustrated as follows:

Rates on Grain from Cairo, Illinois, to Augusta, Georgia.

When shipped direct.	When shipped to Nashville and reshipped.		When shipped to Atlanta and reshipped.	Disadvantage of Atlanta.
26	26	To Atlanta	24	9
		Beyond	11	
		Total.....	35	

It will be noted that the Atlanta shipper is at a like disadvantage as compared with the Cairo shipper.

737 It does not follow, however, that the disadvantage under which the Atlanta shippers labor in doing business at such points is chargeable to the reshipping arrangements at Nashville.

Commissioner Clements: If the Nashville reshipping arrang ments were not there what would the Nashville dealer pay to g that coarload from Cairo to Augusta; that is, in the absence reshipping at Nashville, he would handle it just as the Atlan man now does. What would it cost him to do it into Nashville ar out, to Augusta?

Mr. Compton: Will you permit me to make an elaboration on i The direct answer is that the rate would be twenty-nine cents; but want to make an explanation in connection with it.

Commissioner Clements: Let us understand that, and then yo may go on. If the Nashville man handles it into Nashville an out again to Augusta, just as the Atlanta man now does, it woul be, I understand you to say, 29 cents?

Mr. Compton: Ten cents to Nashville and 19 cents beyond; 2 cents which the Nashville reshipper would pay.

Commissioner Clements: As it is now for Nashville itself, how much?

Mr. Compton: Nashville reships through Cairo at the rate of 2 cents.

738 Commissioner Clements: And if he handles it as the At- lanta man does, on the present rates, it would be twenty- nine?

Mr. Compton: Yes sir; he would still have a three cent advan- tage over the Atlanta man. That is what I wanted to show you.

Commissioner Clements: Now, go on with any statement you want to make in connection with it.

Mr. Compton: The rate from Cairo to Augusta is 26 cents. If reshipping at Nashville was discontinued entirely Nashville would be at a disadvantage as compared to Cairo, to the extent of three cents per one hundred pounds, because the rate from the Ohio River to Nashville is ten cents, and the rate from the Ohio River to Augusta is nineteen cents, making a total of twenty-nine cents, which is three cents higher. Nashville would still have an advantage over Atlanta because they would draw their grain from Cairo to Atlanta and reship at 11 cents, making thirty-five. Atlanta would gain nothing at all. She could do no business in Augusta, nor could Nashville do any business in Augusta. You would simply deprive Nashville of doing the business now that she does do in Augusta, and deprive Augusta of a western market, without any benefit whatever to the City of Atlanta. Notwithstanding the

739 fact that the reshipping arrangement at Nashville were to be withdrawn, she would still have an advantage over At- lanta, but that advantage over Atlanta would do her no good because she would lose it all for the reason that Cairo could ship direct at 26 cents.

Mr. McConnico: In all the figures you have given in answer to the question of Commissioner Clements, the rates given into Nash- ville are rail rates?

Mr. Compton: Yes.

Mr. McConnico: Would you give those same figures, giving water rates?

Mr. Compton: By the use of water rates to Nashville and rail rates from Nashville the Nashville dealer can get his grain in at seven cents, and would be on a parity with the through shipper from Cairo to Augusta.

Mr. Baxter: Now, it is shown in the Commission's original report in this case that Atlanta dealers are at a disadvantage when it comes to engaging in business with such points as Griffin and Newnan, Georgia. Please state if this disadvantage is due to the reshipping arrangements at Nashville, and if not, explain to what it is due.

Mr. Compton: The disadvantages experienced by Atlanta merchants in selling grain to Griffin and Newnan, Georgia, are not in any way related to or caused by the reshipping arrange-
740 ments at Nashville. They are due solely to the existing basis under which the rates on grain from the west to those points are made 3 cents per hundred pounds higher than the rates to Macon, Georgia, instead of being made, as was once the case, on the basis of Atlanta combination. Under this basis, the difference between the rates from Ohio and Mississippi River crossings, Nashville, etc., to Newnan and Griffin, and the rates to Atlanta is 5 cents per 100 pounds, and whether the grain was shipped from Nashville at the Nashville proper rate or whether it were shipped on basis of the through rates from the Ohio River, the situation of Atlanta versus Griffin and Newnan would still be the same, because in either event, the rates from Nashville to Griffin or Newnan would be 5 cents per 100 pounds higher than to Atlanta, and the Atlanta merchants would be at a disadvantage to the extent of the difference between the local rates from Atlanta to Newnan and Griffin and the five cents difference.

Nashville rates are made with relation to the rates from the Ohio River. The Ohio River rates to Griffin are made with relation to Macon, three cents higher on differentials. Hence a combination on Atlanta is greater than the through rate from the Ohio River
741 crossings either to Newnan or Griffin, and it is the identical situation at Griffin and Newnan as I have just explained as to Augusta, the only difference being the amount of difference because of the difference in the differential.

Mr. Baxter: In connection with this Griffin and Newnan adjustment is it not a fact that the distributing territory of such old jobbing centers as Atlanta, Macon and other points, has been curtailed by the establishment of new competitive basing points?

Mr. Compton: Yes sir. In the past twenty years many towns to which the rates were formerly made on combination have been accorded competitive rates lower than combinations and thus made basing points. This has been largely due to the attitude of the Interstate Commerce Commission and this curtailed the territory of Macon and Atlanta; Dawson and Cordele were made base points for the same reason and entered into competition with Columbus and Macon; Helena, McRae, Tifton, Valdosta, and Moultrie have all obtained lower rates as the result of the complaints or threatened complaints to the Commission. Numerous other basing points have been added for various competitive reasons. Each new basing point

naturally encroaches the territory previously occupied by the
742 older jobbing centers and restricts their business. This is the real explanation of the decrease in the territory sometimes complained of by these older cities, like Atlanta and Macon.

Mr. Baxter: How far northwest of Atlanta is Nashville?

Mr. Compton: 289 miles.

Mr. Baxter: Is it not a fact that Nashville being located 289 miles northwest of Atlanta is a sufficient reason to create for Nashville a natural advantage over Atlanta in the distribution of grain in the territory south of Atlanta, of which the Atlanta merchants are complaining in this case, and does not this advantage arise independent of and separate from the fact of the reshipping arrangements at Nashville, and if so, explain why?

Mr. Compton: Yes sir, this is so because there are numerous other common and junction points in the south than Atlanta which are entitled to and are given through competitive rates from Nashville and other western points lower than can be made on basis of the Atlanta combination, and for that reason Nashville has a natural and inherent advantage over Atlanta in doing business at such other common and junction points.

The mere fact that Nashville is located 289 miles northwest of
743 Atlanta is in itself sufficient to give to Nashville all of the advantages over Atlanta in the distribution of grain in the territory south of Atlanta, of which the Atlanta merchants are complaining in this case, and this advantage arises entirely independent of and separate from the fact that reshipping arrangements are in effect at Nashville.

Mr. Baxter: Is it not a fact that wherever and to whatever extent the through rates on grain from Nashville to any point in the territory south of Nashville are lower than the combination of the published rates from Nashville to Atlanta plus the published rates from Atlanta to the same points, Nashville now has and would continue to have irrespective of the reshipping privileges at Nashville, an advantage over Atlanta?

Mr. Compton: Yes sir.

Mr. Baxter: Can this advantage be overcome by any system of rate adjustment? If not, why not?

Mr. Compton: No sir; this advantage cannot be overcome by any system of rate adjustment, simply because no rate system has ever been devised under which all the rates from and to all points are made on combination on all other points.

Mr. Baxter: Is it not a fact that other points north of Atlanta,
744 such as Cincinnati, Louisville, Evansville, Cairo, St. Louis and Memphis, all have the same kind of advantage over Atlanta in this respect?

Mr. Compton: Yes sir.

Mr. Baxter: State whether or not if the reshipping arrangements were withdrawn from Nashville, the Atlanta grain dealers would still be at a disadvantage as compared with those at Nashville; and if so, please explain why.

Mr. Compton: Yes sir; they would. This may be shown by the following example:

Rates on Grain from Cairo, Illinois, to Augusta, Georgia.

When shipped direct.	When shipped to and from Nashville at Nashville proper rates.		When shipped to Atlanta and reshipped.		Disadvantage of Atlanta.
26	To Nash.....	10	To Atlanta.....	24	
	Beyond	19	Beyond	11	
	Total	29	Total	35	6

Mr. Wimbish: Has he given that before?

Mr. Compton: No.

Commissioner Clements: I do not know what it is yet.

Mr. Compton: This is to show that if Nashville reshipping was withdrawn Atlanta would still be at a disadvantage.

Commissioner Clements: I do not see the relevancy of it. If a man is suffering one disadvantage, it is no reason why he
745 should be subjected to another one. I do not mean to express any opinion about it, but I do not see the force of showing that if you remove this alleged disadvantage he will still be under another one.

Mr. Baxter: The issue is as to the cause of that disadvantage. It is our insistence that this re-shipping is not that. We insist that the reshipping does not cause the disadvantage.

Commissioner Clements: Atlanta can hardly claim to have business made up to her by some railroad arrangement that would bring her business up. All she can complain of is an unjust discrimination—but I guess the easiest way is to hear it. Your purpose is to explain that notwithstanding this alleged disadvantage was removed there would still be other difficulties for her to encounter.

Mr. Baxter: Yes sir.

Commissioner Clements: She would have to take her chances at that. If this was found to be an unjust advantage and it was removed and the other was not she would have to get along the best she could. But still, we will hear it, if it will not take long.

Mr. Compton: It is very short.

746 *Rates on Grain from Cairo, Illinois, to Augusta, Georgia.*

When shipped direct.	When shipped to and from Nashville at Nashville proper rates.		When shipped to Atlanta and reshipped.		Disadvantage of Atlanta.
	To Nash.....	10	To Atlanta.....	24	
26	Beyond	19	Beyond	11	6
	Total	29	Total	35	

Now, the other example was the disadvantage of Atlanta versus Cairo. The disadvantage was due to the fact that in making one rate you add seven onto Nashville, and in the other case you add ten. The disadvantage of Atlanta in the Southeast, using Macon as an Illustration, is the difference between the differential of two cents, Macon over Atlanta, and the local Atlanta to Macon, just as it is in Augusta.

It will be noted that the Atlanta shipper would still be at a disadvantage as compared with the Cairo shipper, the same as he now is as compared with both the Cairo and Nashville shipper.

It is clear from this illustration that the disadvantage of Atlanta in doing business at points other than Atlanta and vicinity can-
not be due to the reshipping arrangements at Nashville
747 but must arise from some other cause.

The reason clearly lies in the fact that Nashville is 289 miles northwest of Atlanta and the rates from Nashville as well as from the various Ohio and Mississippi River crossings to all points in Georgia except Atlanta and vicinity are lower than can be made on basis of Atlanta combination.

In other words, all the other common points and jobbing centers in Georgia have competitive rates on grain from Nashville and Ohio River and Mississippi River crossings as well as has Atlanta and for this reason Atlanta shippers are naturally at a disadvantage in doing business at such other points, not only as compared with the shippers at those other points, but as compared with the merchants and dealers located at Nashville and the various Ohio and Mississippi River crossings.

This disadvantage, however, arises entirely apart from and has no connection whatever with the reshipping arrangements at Nashville. It is canceled by the geographical location of Atlanta and the system of competitive rate making from the west to the Southeast.

Mr. McConnico: I presume the figures you have given are based on the rail rate into Nashville, and that the water rate would make
the advantage three cents lower?

748 Mr. Compton: That is true.

Mr. McConnico: May I ask you one other question. In answer to a question by Commissioner Clements you gave the rates from Nashville to certain other points on the basis of no reshipping at Nashville, and showed that Nashville would be at a disadvantage of three cents in certain territory. In answer to a question from me you said if the Nashville shipper brought this grain into Nashville by water he would still be on a parity even without reshipping, with Augusta and other points in shipping into the territory referred to by Commissioner Clements. In such an event would Atlanta and the other places be benefited by the removal of competition of the Nashville market, or would the railroads merely suffer a loss in their earnings to the amount of the tonnage that would be thus diverted from rail to water?

Mr. Compton: Atlanta would not gain anything at all. Nashville would lose the business and the railroads west of Nashville the revenue.

Mr. McConnico: My question is if it was brought in by water.

Mr. Compton: If it was brought in by water the railroads could not handle it, and would lose the revenue west of Nashville.

749 Mr. McConnico: Then the intention of reshipping at Nashville is not to preserve the property, but merely to prevent a loss on the part of the railroads by preventing a diversion of their traffic?

Mr. Compton: Yes sir.

Mr. Baxter: Do not the reshipping arrangements at Nashville only operate to give to Nashville the same rates to the Southeast as are given to the various Ohio and Mississippi River crossings?

Mr. Compton: Yes sir; that is all.

Mr. Baxter: The competition between these crossings and Atlanta is just as intense as the competition between Nashville and Atlanta; is it not?

Mr. Compton: Yes sir.

Mr. Baxter: The Ohio and Mississippi River crossings have all the same advantages over Atlanta and in the same degree that Nashville has; have they not?

Mr. Compton: Yes sir.

Mr. Baxter: State whether or not in your opinion the withdrawal of the reshipping arrangement at Nashville would increase the movement of grain moving each season from the west to the southeast, and give your reason fully and in detail for any opinion you

750 may express.

Mr. Compton: There is only a certain amount of grain moving each season from the west to the southeast. The withdrawal of the reshipping arrangements at Nashville would not increase this amount. Neither would it decrease it. It would simply divert the grain moving into the southeast via Nashville to other channels, and result in an increased direct movement of grain from and through the Ohio and Mississippi River crossings to the Southeast. It would not result in any increased movement into Atlanta or other points in Georgia. It would not result in any increased movement from Atlanta or other points in Georgia to any point.

It would have no effect whatever upon the volume of movement of grain to, from and through Atlanta or other points in Georgia It would therefore not benefit Atlanta or other points in Georgia, in any respect whatsoever.

Mr. Baxter: State in what essential respects the circumstances and conditions at Nashville are substantially dissimilar to those at Atlanta and the other towns in Georgia at which complainants are located?

Mr. Compton: The circumstances and conditions at Nashville are substantially dissimilar to Atlanta and other towns in Georgia

751 at which complainants are located in at least two essential respects, i. e., the geographical location and river competition as heretofore explained.

Mr. Baxter: Now, explain why reshipping arrangements are not established at Atlanta, Georgia and the other interior southeastern jobbing centers on grain drawn in from the north and the west?

Mr. Compton: In the first place, Atlanta and other important points in the Southeast are not natural primary grain markets in any sense of the term, but are consuming markets.

They are not natural concentrating points for western grain such as are Kansas City, Omaha, St. Louis, Cincinnati, and Nashville, but are merely jobbing cities engaged in buying grain in the north and west and distributing it to a limited surrounding territory or consuming it locally; and there is no commercial reason for the establishment of reshipping arrangements at such points, nor is there any actual or potential reshipping arrangement on grain at those points. And in this latter respect especially, the circumstances and conditions at those points are entirely dissimilar from those at Nashville, where, as I have previously shown, actual river competition does necessitate reshipping arrangements. For these reasons
752 reshipping arrangements were not established at Atlanta and other Southeastern points referred to.

Another reason is that reshipping arrangements could not be established at Atlanta, without at the same time establishing them at all the other important southern jobbing points; and in fact, without establishing them at every town in the south at which a jobber might be located who might desire to engage in reshipping of a greater or less quantity of grain. And, the establishment of reshipping arrangements at all of these southern jobbing points would result in the utmost confusion and would not be only unwise, but is entirely impracticable.

Mr. Baxter: Please explain why it is unwise and impracticable to operate transit arrangements at these interior southern points?

Mr. Compton: It is clear that even if reshipping arrangements were established at Atlanta and other points in Georgia on grain originating at Ohio and Mississippi River crossings, those reshipping arrangements could only be applicable as to grain moving beyond each of these towns in Georgia and could not reasonably be expected to include back hauls in the direction of Nashville and the Ohio and Mississippi River crossings. Macon, Georgia, could not rea-
753 sonably expect to draw grain from Cairo and reship it back to Atlanta on basis of the Cairo to Atlanta rate, nor could Atlanta reasonably expect to draw grain from Cairo and reship it back to Chattanooga on basis of the Cairo to Chattanooga rate. To do so would not only involve a back haul, but would result in charging lower rates after the reshipment than the rates to the reshipping point; it would cause the railroads to perform double service for less money than the single service from point of origin to the reshipping point. And, of course, if Atlanta could not reship back towards Nashville, it would still be only able to compete on an equality with the Nashville shippers to points south of Atlanta, and not points north of Atlanta.

But, on the other hand, Atlanta would be enabled to compete in the territory now tributary to Macon, which she cannot now do, while, on the other hand, Macon could not enter Atlanta's territory. Macon and Atlanta both could invade Albany's territory. Macon and Atlanta and Albany could all three invade Valdosta's territory,

and so on, and injustice would be done to each of these southern jobbing centers, the points furthest south suffering the most.

Mr. Compton: If this basis of reshipping is established at Atlanta, certainly Macon would ask it as well as Augusta. Whatever
754 Atlanta gets or asks for, Montgomery is certainly going to request; likewise Birmingham. I do not believe, if the reshipping arrangements were to be put in at Atlanta, it would be possible to confine them to Atlanta. There is so much rivalry between those cities that we would have complaints immediately.

Commissioner Clements: Of course you would, but the roads have established these things at Kansas City, Omaha, St. Louis, Chicago, Louisville, Cincinnati, Nashville, and so on; that has been found practicable.

Mr. Pitts: That is all in grain producing regions.

Commissioner Clements: I do not see how that would affect the question about doing it. He speaks of it as being impracticable altogether.

Mr. Compton: I think it is.

Commissioner Clements: Because there are a number of towns which would want it if Atlanta got it. It is already done in a number of towns covering a territory all over the northwest. It may be it ought not to be done. But when you say it cannot be done I do not understand the logic of it. There may be no good reason for doing it. It may be that the ends of justice would not be promoted by doing it, but to say it is impracticable is not easy for me
755 to understand.

Mr. Compton: Let me see if I can explain that feature of it. Business moves from the west to Atlanta by all of the gateways, all of the Ohio River gateways, from Cincinnati, Cairo and Memphis, from the territory north of the Ohio River and west of the Mississippi River—I would say entirely west of the Mississippi River territory. From the western gateways, west of Cincinnati, the business is handled to Atlanta via Birmingham and via Montgomery from Cincinnati. The C. N. O. & T. P. Railroad will handle business to Montgomery by way of Atlanta and via Chattanooga. Therefore, if you reship in the direction of an upward movement, you would reship at Birmingham and its group points, Anniston and its group points, probably twenty in number; Montgomery to Selma and Opelika, to Atlanta, and points reached through Atlanta in the direction of Augusta; and to Macon and all of that territory. Montgomery is south of Atlanta. Macon and Columbus are very jealous of Montgomery, as we all know.

If we put in reshipping arrangements at Montgomery, at Selma and so forth, and at Atlanta, Macon, Augusta, and so forth, we must, of necessity, put them in at all points. Then you have back hauls, and if you give it to one point which will handle
756 a carload of grain it seems to me you must give it to all. You would make an interminable mess of the situation in my opinion, for the reason if you undertake to carry out reshipping, as I speak of reshipping in this case, and by reshipping I mean the maintenance of the Ohio or

Mississippi River point to the destination where the grain is finally consumed—Atlanta would desire to compete with Macon. Atlanta produces no grain. She must get her grain from beyond Atlanta. You would reship at Atlanta and cut back the proportions all the way through to the Ohio River in order that each mile of road should have its proper proportion of that rate applicable up to Altanta. If it is reshipped to Macon, then you must perform another set of calculations in order that each line may have its proportion of the Macon rate. If it goes to Albany you must refigure again, in order that it may be prorated on its proper basis over each mile to Albany.

If Atlanta ships to Macon and Macon to Americus or Albany, and Albany to Valdosta and so forth, you compound your difficulties to the extent that each reshipping occurs.

I feel sure it is bad enough now, even going to the extent we do in adjusting these differences by reshipping, and if we must do what the Interstate Commerce Commission says in No. 1247, and
757 we give to five hundred points in that territory reshipping privileges, we would have to have an army of police, and it will cost a lot of money to pay for them.

I say that I further believe that to extend this to Atlanta and other points in the Southeastern territory would cause untold trouble, and I do not think that it is improper for me to say there might be some trouble come up that would embarrass all of us in handling matters in that way, at all of these various points, involving back haul as it will, and all matters incident to the final settlement of the rates properly applicable from the Ohio River point to the destination where the grain is finally consumed.

(Thereupon, at 1:15 o'clock p. m., a recess was taken until 2 o'clock.)

758

After Recess.

Met at 2 o'clock p. m., pursuant to the taking of recess.

C. B. COMPTON resumed the stand and testified further as follows:

Mr. Baxter: Is Nashville a southeastern city?

Mr. Compton: No sir.

Mr. Baxter: Why not?

Mr. Compton: Nashville is not. It is a western point of origin and is properly considered and grouped with such western points of origin as the various Ohio and Mississippi River crossings.

Mr. Baxter: State whether or not in your opinion Nashville is a primary grain market, and give your reasons for any opinion you may express.

Mr. Compton: A primary grain market is, as I understand it, a natural concentrating point at which surplus grain of a grain producing territory is concentrated and later sold in the markets of consumption.

Nashville, Tenn., is located in the Tennessee grain producing region, and is a natural market to which the vast amount of grain

grown in the Cumberland and Ohio River valleys is drawn, and it is as much a primary market as are the markets of Omaha,
759 Kansas City, Minneapolis and Chicago, all of those cities being natural concentrating points for grain grown in territory tributary to them.

No so-called primary grain market can be such, strictly speaking, as to all grain handled by that market. For instance, it cannot be contended that Chicago is the first natural concentrating point for all the grain which is shipped into and handled at Chicago, because it is a well known fact that a large portion of the grain handled through Chicago is shipped from such other so-called primary grain markets as Kansas City, Omaha, Minneapolis, etc.

This is also true as to such points as Cairo, Evansville, Louisville and Cincinnati.

Nashville is certainly as much a primary market as any of these places.

Mr. Baxter: All that the Nashville lines have done by establishing reshipping arrangements as to Nashville is to place Nashville on a parity with the other gateways and the primary markets; is it not?

Mr. Compton: Yes sir; that is all.

Mr. Baxter: Are not the circumstances and conditions at said other gateways and primary markets substantially similar to those existing at Nashville.

760 Mr. Compton: Yes sir. Reshipping arrangements at Nashville cannot alone be considered but must, of necessity, stand or fall with the reshipping arrangements at the Ohio and Mississippi River crossings and, in fact, all other points in the country where reshipping is allowed.

Mr. Baxter: State whether or not there are numerous instances where the conditions, rules and regulations are the same as at Nashville with respect to the practice of reshipping grain; and if there are, please give some representative, illustrative examples.

Mr. Compton: Yes sir; there are.

Reshipping arrangements are in force at Evansville, Ind., and Henderson, Ky., on grain drawn into those markets from the north and west and subsequently reshipped to points in the southeast.

Reshipping arrangements are also in force at Louisville on grain drawn into Louisville, Ky., from the north and west, and subsequently forwarded to points in southeastern territory.

Reshipping arrangements are in force at Cairo, Cincinnati, Ohio, Covington, Ky., Central Covington, Ky., and Latonia, Ky., on grain drawn into those points and reshipped to the south-
761 east.

All of these arrangements are substantially the same as those in effect at Nashville, Tenn.

Mr. Baxter: Mr. Compton, please file as an exhibit to your testimony copies of the Louisville & Nashville Railroad Company's tariffs publishing the reshipping arrangements at Henderson and Evansville to which you have just referred.

Mr. Compton: I file as Exhibit No. 8, a copy of Louisville & Nashville Tariff R. C. Circular No. 2898 (I. C. C. No. A-11459)

effective April 25, 1910, authorizing reshipping at Henderson, Ky and Evansville, Indiana, to southeastern territory, of grain an grain products.

(The same, thus offered in evidence, was marked "Defendants Exhibit No. 8" and is forwarded herewith, attached hereto.)

Mr. Baxter: Please file as exhibits to your testimony, copies o the Louisville & Nashville Railroad Company's tariffs publishing the reshipping arrangement at Louisville, Ky., to which you hav just referred.

Mr. Compton: I file the same herewith, marked Exhibit No. 9 which is the rules governing the forwarding and reshipping of grain and grain products to the southeast from and through
762 Louisville, Ky. The Tariff reference is R. C. Circular No. 2915 (I. C. C. A-11463) effective April 26, 1910.

(The same, thus offered in evidence, was marked "Defendants' Exhibit No. 9," and is forwarded herewith and attached hereto.)

Mr. Baxter: Please file as an exhibit to your testimony copy of the Louisville & Nashville Railroad Company's tariff publishing the reshipping arrangement at Cincinnati, Ohio, Covington, Central Covington and Latonia, Ky., to which you have just referred.

Mr. Compton: I file the same as Exhibit No. 10, being a copy of R. C. Circular No. 2916 (I. C. C. A-11464), effective April 26, 1910. It contains the rules and regulations governing the forwarding and reshipping of grain and grain products to the southeast from and through Cincinnati, Ohio, Covington, Central Covington, and Latonia, Ky.

(The same, thus offered in evidence, was marked "Defendants' Exhibit No. 10," and is forwarded herewith, attached hereto.)

Mr. Baxter: Please file as an exhibit to your testimony copy of the Louisville & Nashville Railroad Company's tariff publishing the reshipping arrangements at Nashville, Tenn.

763 Mr. Compton: I file the same herewith as Exhibit No. 11; R. C. Circular No. 2811 (I. C. C. No. A-11335) effective February 1, 1910, being the rules and regulations governing the allowance of transit privileges at Nashville, Tenn.

Mr. Baxter: Now, Mr. Compton, please explain why the cities located at the various Ohio River crossings are enabled to avail themselves of the privilege of reshipping grain to points in the southeast, at the same through rates as apply from the original points of shipment?.

Mr. Compton: It is due almost exclusively to the establishment of reshipping arrangements at said cities. This is so because it is only an extremely limited territory from which each Ohio and Mississippi River crossing can draw grain and reship it on basis of the tariff rates in and tariff rates out as cheaply as the through rates from origin to destination. Take Louisville and Henderson. Both are located on the south bank of the Ohio River. In almost all cases, the rates from Illinois and Indiana shipping points are made

on combination of some one of the north bank Ohio River crossings plus the rates therefrom to the southeast and since the rates from the north bank crossings to the south are uniformly the same as the rates from the south bank crossings, it is utterly impossible
764 to ship from any of those points of origin to Louisville and Henderson and reship thence, at Louisville and Henderson, proper, at as low total rates as can be made on the north bank of the Ohio River combination and for this reason alone it is necessary to give Louisville and Henderson reshipping arrangements and refund Ohio River Bridge Tolls on all such grain.

Similarly, it is necessary to give Louisville and Cincinnati reshipping arrangements on all grain originating west of the Mississippi River, as the rates on such grain to the southeast uniformly make on combination on some one of the lower Ohio River crossings, such as Evansville, Cairo, etc., because the rates from all Ohio River crossings to the southeast (Atlanta, and so forth) are uniform and the rates from points of origin to the upper Ohio River crossings are higher than they are to the lower crossings. For this reason the lower crossings combination is equalized through the upper crossings by the establishment of reshipping arrangements at the upper crossings.

In other words, there is not a single Ohio or Mississippi River crossing which is primarily a natural route for all the grain moving through such crossings, and it is only by equalizing the com-
765 bination rates by reshipping arrangements through the various crossings that all of such crossings are placed on an equality and enabled to compete with each other for the movement of the grain traffic into the south.

Mr. Baxter: State the extent, if any, to which in your opinion the Cumberland River boat tonnage would increase as a result of the withdrawal of the present reshipping arrangements at Nashville?

Mr. Compton: It would depend largely upon the ability of the Nashville merchants to avail themselves of the Cumberland River and at the same time compete with the merchants located at the various Ohio and Mississippi River crossings.

The Nashville merchants would be compelled to transfer the grain at the various Ohio and Mississippi River crossings from the elevator or car or barge, transport it by river to Nashville, and transfer it from the boat or barge to the warehouse or elevator or depot and on shipping from Nashville south they would be compelled to pay the Nashville proper rates.

If they could do this at the difference between the rates from the Ohio River to the South and the rates from Nashville to the
766 south, and I believe they could, they could continue to compete with the Ohio and Mississippi River points and the boat tonnage in the Cumberland River would undoubtedly increase to an immense extent.

If, on the other hand, they could not meet the competition of other markets by the use of the Cumberland River, they would be compelled to go out of the business entirely, and would be restricted to the sale of grain in Nashville and vicinity and forced out of the

southeastern territory to which Nashville has been supplying t
products for many years.

Mr. Baxter: In either event, would not the railroad compa
operating from the various Ohio and Mississippi River crossing
Nashville be subjected to large and substantial loss; and if so, exp
how.

Mr. Compton: Yes sir; they would be subjected to substan
loss, either by being compelled to surrender the inbound tr
to the boat line, or by the diversion of the traffic now being han
through Nashville from the various Ohio and Mississippi R
crossings, where it would be divided among the various compet
lines leading from those crossings to the southeast.

Mr. Baxter: State what, in your opinion, would be the
767 sultant effect on the interests of the complainant- in this
if the order of the Interstate Commerce Commission is
forced, that the practice of reshipping at Nashville be discontinu

Mr. Compton: The reshipping arrangements at Nashville only
erate to give to Nashville the same rates to the southeast as are alre
given to the various Ohio and Mississippi River crossings. The c
petition between these crossings and Atlanta is presumably just
intense as the competition between Nashville and Atlanta.

The Ohio and Mississippi River crossings have all the advanta
over Atlanta and in the same degree that Nashville has. There
only a certain amount of grain moving each season from the w
to the southeast.

The withdrawal of the reshipping arrangements at Nashvi
would not increase this amount. Neither would it decrease it.
would simply divert the grain now moving into the southeast
Nashville to other channels.

It would simply result in an increased direct movement of gra
from and through the Ohio and Mississippi River crossings to t
southeast.

It would not result in any increased movement into Atlanta
other points in Georgia. It would not result in any increa
768 of territory to Atlanta or any other jobbing point in Georgi
It would have no effect whatever upon the volume of mov
ment of grain to points in Georgia.

It would, therefore, not benefit Atlanta or other points in Georgi
in any respect whatsoever.

It would on the contrary deprive Atlanta and other points i
Georgia of a western grain market, which might at times give A
lanta and other Georgia merchants an opportunity to buy grai
cheaper than they would otherwise do or to secure it quicker tha
they would otherwise do.

The withdrawal of the reshipping arrangements at Nashvill
could not possibly benefit Atlanta or other Georgia points.
might possibly, and certainly could, be detrimental to Atlanta, an
other Georgia points.

Since, therefore, Atlanta and other Georgia points could no
possibly be benefited by the withdrawal of the reshipping arrang
ments at Nashville, it is difficult to see how Atlanta or other Georgia

points have possibly been prejudiced by the existence of the reshipping arrangements at Nashville. The one must follow the other.

769 We have in this case the peculiar situation of numerous shippers and dealers located at various important cities and towns in Georgia complaining of and endeavoring to take away from shippers and dealers located at Nashville, Tenn., and equally important *city* in Tennessee, an adjustment which is no wise injurious to them and the loss of which will be highly detrimental to Nashville.

Mr. Baxter: State what, in your opinion, would be the resultant effect on the interests of Nashville if the order of the Interstate Commerce Commission is enforced that the practice of reshipping grain at Nashville be discontinued?

Mr. Compton: I have stated in answer to your previous question that the cancellation of reshipping arrangements on grain can be of no possible benefit whatever to Atlanta or the other towns in Georgia at which complainants in this case are located. And that it might be positively detrimental to Atlanta and the other towns in Georgia.

That the order of the Commission, if enforced will be highly detrimental to the grain dealers and merchants of Nashville and their business, is self-evident, for even though they may, by using the Cumberland River, be enabled to retain some portion of their trade in southeastern territory, it will be at the expense of

770 much additional capital and much curtailment of profits.

The exact loss to which Nashville merchants and dealers will be subjected is, however, problematical.

The previous record in this case shows that by reason of the reshipping arrangements on grain at Nashville, a large number of elevators and warehouses for the handling of grain have been erected from time to time and are now in use on or in the vicinity of the tracks of the L. & N. Railroad Company and N. C. & St. L. Railway, in Nashville, and that the amount of capital invested in the grain industry at Nashville, Tenn., is several million dollars.

It also shows that of the elevators and warehouses doing business at Nashville, Tenn., only one of them is located on the Cumberland River.

It is clear that if the order of the Commission is enforced and the reshipping arrangements on grain at Nashville abolished, the Nashville merchants and dealers will either be compelled to give up their trade in southeastern territory because of inability to compete with the Ohio and Mississippi River crossings on basis of the present rail rates to and from Nashville, proper, or else they will be forced to use the Cumberland River for the transportation of grain

771 from the western points or origin to Nashville in their endeavor to compete with other western markets located on and north and west of the Ohio and Mississippi River crossings for the trade in southeastern territory.

The extent to which the Cumberland River can be so used will depend largely upon the ability of the Nashville merchants to draw their grain into Nashville by boats and barges cheaply enough to compete with the merchants located at the various Ohio and Mississippi River crossings.

The Nashville merchants will be compelled to transfer the grai
at various Ohio and Mississippi River crossings from the elevato
or cars to boats or barges, transport it by river to Nashville, an
transfer it from the boat or barge to the warehouse or elevator
depot and on shipping from Nashville south they will be compelle
to pay the Nashville proper rates.

If they can do this at the difference between the rates from th
Ohio River to the south and the rates from Nashville to the soutl
they can continue to compete with the Ohio and Mississippi Rive
points and the boat tonnage in the Cumberland River will undoub
edly increase to an immense extent.

If they cannot so meet the competition of other markets b
772 use of the Cumberland River, they will be compelled to g
out of the business entirely, and will be restricted to the sal
of grain in Nashville and vicinity and forced out of the south
eastern territory which territory Nashville has been supplying fo
many years.

Even should the Cumberland River be available, it is very prob
able that a large proportion of the business in grain heretofore done
by Nashville in southeastern territory will be diverted from Nash
ville to the other western markets, thus depriving Nashville and
merchants and dealers located there of a portion of the trade here
tofore enjoyed by them.

Also if the merchants and dealers at Nashville are forced to use the
Cumberland River for the transportation of grain from the western
points of origin into Nashville in order to enable them to continue
to compete with merchants and dealers located at other western
grain markets located on and north and west of the Ohio and Mis
sissippi Rivers for the trade in grain in southeastern territory, the
merchants and dealers located at Nashville will be compelled to in
cur large additional expense in placing additional steamboats and
barges on the Cumberland River for the purpose of handling the
grain into Nashville without any corresponding increased
773. compensation.

Further, in order to profitably use the Cumberland River
for transportation of grain from western points of origin into Nash
ville the merchants and dealers located at Nashville will be com
pelled to erect additional elevators and warehouses at Nashville on
the Cumberland River and to abandon the present elevators and
warehouses at Nashville which as stated before, are located on the
tracks of the L. & N. Railroad Company and the N. C. & St. L.
Railway in Nashville, forcing the merchants and dealers located at
Nashville to incur enormous additional expense and depriving them
of large and valuable investments.

So that if the reshipping arrangements on grain are withdrawn
from Nashville and the present adjustment of rail freight rates on
grain from the various Ohio and Mississippi River crossings to
Nashville and from Nashville to points in southeastern territory are
continued Nashville and the merchants and dealers will be injured
by the diversion of a large portion of their trade to other western
markets; by being forced to incur the expense of providing addi
tional boats and barges in the Cumberland River; by being forced

to incur the expense of providing additional elevation and
774 warehousing facilities along the river banks at Nashville, and by being forced to abandon the use of their present elevators and warehouses at Nashville.

Whatever portion of its present trade in grain in southeastern territory is lost by Nashville, will not result in any benefit to the southeastern points, but will divert business to the western gateways.

Mr. Baxter: State what, in your opinion, would be the resultant effect on the interests of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company, if the order of the Interstate Commerce Commission is enforced that the practice of reshipping grain at Nashville be discontinued.

Mr. Compton: Whatever may be the effect of the cancellation of the reshipping arrangements at Nashville the business of the merchants and dealers located at Nashville, its effect upon the revenues of the Nashville railroads, that is, the L. & N. Railroad Company and the N. C. & L. Railway will of necessity be injurious.

Those roads are in competition with the boats in the Cumberland River for the movement of western grain and of all other traffic to Nashville, Tenn.

They are also in competition with other railroads at each
775 of the various Ohio and Mississippi River crossings for the movement of western grain direct from each of these crossings to points in southeastern territory.

If the Nashville merchants and dealers should succeed in utilizing the Cumberland River for the movement of western grain into Nashville and supplying their trade in the southeast brought into Nashville by boat, the Nashville railroads will lose the grain traffic heretofore carried by them into Nashville from the various Ohio and Mississippi River crossings.

In this event, there will be a large increase in the number and tonnage of steamboats and barges in the Cumberland River and a large proportion of the traffic, other than grain, as well as grain heretofore brought into Nashville by railroads will be diverted to steamboats and barges.

In any event, a large portion of the business heretofore done by Nashville in southeastern territory will be diverted from Nashville to other western markets located on and north and west of the Ohio and Mississippi Rivers where it will be divided up amongst the various competing lines leading from these points to the southeast, depriving the L. & N. Railroad Company and the N. C. & St. L. Rail-
way of the carriage heretofore enjoyed by them of grain
776 from the western points of origin to Nashville and from Nashville to southeastern territory and of the revenues heretofore received for such transportation.

Mr. Baxter: State what, in your opinion, would be the resultant effect on the interests of the public at large, if the order of the Interstate Commerce Commission is enforced that the practice of reshipping at Nashville be discontinued.

Mr. Compton: The injurious effects of the withdrawal of re-

shipping arrangements at Nashville will be visited to a greater or less extent on the public at large.

Many Nashville people will be thrown out of employment and the business interests of Nashville correspondingly injured.

The grain dealers and brokers located on and north and west of the Ohio and Mississippi Rivers will be deprived to some extent at least of a buying market.

The merchants and dealers in southeastern territory engaged in buying and selling grain will be deprived of Nashville as a market and of all the advantages which they at present derive from that market, thus subjecting them to more or less loss.

Nashville, Tenn., is geographically the nearest western market available to such merchants and dealers, and by reason of its
777 quoting competitive prices and of the quicker transit from Nashville it is a distinct and great advantage to these merchants and dealers to have Nashville as a market.

Mr. Baxter: Now, I understand from your answers to my last four questions that the enforcement of the previous order of the Interstate Commerce Commission in this case and the consequent cancellation of re-shipping arrangements at Nashville can be of no benefit whatever to any one except to certain western competitors of Nashville who are not complainants in this case, and on the contrary will be positively detrimental and injurious in greater or less degree to Nashville, Tenn., and the merchants and dealers in grain located thereat, and to the railroads reaching Nashville from Ohio and Mississippi River crossings; and to the complainants in this case who will be deprived of a market, and to the public generally. Is this correct?

Mr. Compton: Yes sir.

Mr. Baxter: I think that is all.

Mr. Wimbish: I do not think I have any questions to ask Mr. Compton.

Commissioner Clements: I think you have stated, you and Mr. Barham both, in substance, that Nashville was an advantageous point for the distribution of grain to the southeast.

778 Mr. Compton: Yes sir.

Commissioner Clements: For various reasons which have been assigned?

Mr. Compton: Yes sir.

Commissioner Clements: You have also said it is a primary market. What do you mean by a primary market; and what other markets do you use that term in contrast with?

Mr. Compton: A primary market is a market where the grain is concentrated from the farms for putting the same in condition for movement therefrom to the markets of destination or consumption later. A primary market is a concentrating market. A primary grain market is usually and generally—and in fact all the time, to my knowledge—located where grain can be and is brought to the quickest available place for protecting and curing and marketing, thus giving to the farmer the best available opportunity of disposing of his product.

Commissioner Clements: What other markets do you have in mind than a primary market in respect to the grain business, with which you compare it?

Mr. Compton: I would say that a market like Atlanta is different from a primary market in that it is a consuming market. Likewise, I would say that Augusta is a consuming market; that Macon,
779 Savannah, Jacksonville and points similarly situated.

Commissioner Clements: Well, there is the primary market and the consuming market. Now, what other markets do you have in mind when you speak of those two, in comparing them.

Mr. Compton: In considering this question, Mr. Commissioner, we have considered the difference between the so-called primary or concentrating market, and the market of consumption. I have not undertaken to define any other kind of markets. I do not, in fact, know of any other kind of market, unless you might say some place would be a market for the disposal of grain for milling; that might be intermediate in the sense of stopping for milling; it might be an intermediate market.

Commissioner Clements: Well, there are the primary markets and the consuming markets. Is Nashville both a primary market and a consuming market?

Mr. Compton: Yes, sir. Nashville consumes grain. The grain is shipped to Nashville; grain is shipped out of Nashville. Therefore it would not be improper to say that Nashville was a primary and a consuming market.

Commissioner Clements: Grain is shipped into Chattanooga, and some consumed and some shipped out again; so at Atlanta
780 and Augusta, is it not?

Mr. Compton: Yes sir. Atlanta brings grain into Atlanta. It is consumed by the people and by live stock in Atlanta as well as at the points which are contiguous to Atlanta. So you might say that the local point is a receiving and a consuming market; but it would not be correct to say that a local point like Social Circle is a primary market, because it receives grain.

Commissioner Clements: Well, that depends a great deal on whether it has facilities and rates on which it can concentrate and receive it; does it not? They do not grow corn in Kansas City or Omaha, but they receive it there; they consume a lot of it; they ship out a lot of it, either milled or without milling it. And so with all these other places to which you have referred.

Now, if there were facilities at Chattanooga to receive a large amount of grain from contiguous points as well as through Memphis and other river points, and they could hold a lot of it there until it is wanted at smaller destinations in Alabama, Georgia and Tennessee, and you allowed shipping rates and privileges such as would permit it to go there to be held and go out again, what would
781 be the difference between Nashville and Chattanooga as a market? How would you define one differently from the other, if each of them had equal facilities for doing that business and handling an equal amount of grain into and out, and for consumption at the places mentioned.

Mr. Compton: You first spoke of the Missouri river points, of Kansas City as not producing grain. It is true. There is no grain grown in Kansas City, Missouri, St. Louis, Chicago, Louisville, and so forth. There is possibly, more than likely, some wagon grain. There is much rail grain coming into those points for concentration and forwarding to market, at the most available time, at the farmers' convenience or option, I think, if somebody has not already bought it, to get the benefit of the best market price he can obtain at the time he desires to sell. That is a natural condition existing at the Missouri River. The same natural conditions it seems to me would exist at St. Louis and likewise at the Ohio and Mississippi River crossings.

That condition did and does exist at Nashville. Those natural advantages which Nashville has, compelled the reshipping at Nashville, which is the accepted point south of the Ohio River, not because it was shown any favoritism, but because its geographical location on the Cumberland River, and the competition in the Cumberland River, compelled the railroads to meet this natural
782 advantage that Nashville had, if they expected to compete for the business and handle it into Nashville as well as out of Nashville.

Those things being natural, they, in my opinion, should be continued. To give to Atlanta, Cordele, Macon and Augusta, and like situated points, the same arrangement which Nashville has, would be creating an artificial business arrangement which I do not think would be justified. I do not think it would be good business for the railroads themselves or for the cities to have the arrangements put into effect. They could not be restricted, because they must of necessity be extended over all the territory.

As to your question about Chattanooga, Chattanooga is located on the Tennessee River southeast of Atlanta, 151 miles. The competitive force in that river is not as great as it is in the Cumberland River. That can be shown simply by one simple illustration. The rate from Louisville, first-class, to Nashville, 185 miles, in competition with the Cumberland River, is 38 cents, whereas the rate from Louisville to Chattanooga, 330 miles, in competition with the Tennessee River, is 70 cents. If the competition at Chattanooga was as intense as it is at Nashville, then the rate from the Ohio River to Chattanooga must necessarily be made lower than today's rate.
783 If the same competition had shown itself at Chattanooga as is shown at Nashville, if the railroads expected to compete for this business and handle it over their lines west of Chattanooga, they would have had to meet this river competition in the same manner, in a reshipping manner or some other manner that might best suit the situation. Of course what that could be is a question that would have to be taken up if such competition showed itself. How it could be best done of course is unknown, but it seems to me by reshipping.

Commissioner Clements: Well, take grain that starts out at a given point in the west and goes finally to a given point in the southeast, at a fixed rate, 24 cents or 28 cents, or whatever it is, which

is ultimately charged upon it. It has to stop somewhere in transit waiting for a market, or to be cleaned or dried or for some purpose or other for which these privileges are allowable. What difference does it make to the railroads whether it stops at Chattanooga or Nashville or Dalton or Atlanta, or any other place where they have the facilities to take it and handle it and ship it out again.

Mr. Compton: What difference does it make, you say, to the carrier?

Commissioner Clements: To a railroad. The rate *is* the *the*
784 earnings would be the same; and it is only a question as to whether the people at Chattanooga or Dalton or Atlanta, or elsewhere, along the line of movement, have the same privileges, the same facilities for handling it in and handling it out again, assuming that the rates are reasonable and just.

Mr. Compton: Based on the presumption that the business would be moved in like amounts over the same rails to the destination point, speaking strictly from the transportation standpoint, I do not know that there would be very much difference. When I say that, I speak of the simple question of the one handling in transit. So far as shipment is concerned from Louisville or Cairo to Social Circle, if a car load of stuff is loaded at the Ohio River, it goes through; it does not meet any resistance at Nashville or Atlanta. If the reshipping is done at Nashville there is a stoppage at that point, and it might seem on the face of it that it would create an awkward situation, but that is explained in this way: It does look that way, possibly—that here is a force that is irresistible, it is controlling and compelling, and we must meet that force or we must retire from the business. That situation does not govern at any point beyond the city of Nashville in the direction of the Atlantic Ocean.

785 Commissioner Clements: You have milling in transit on the Louisville and Nashville Railroad the same as the N. C. & St. L., as stated by Mr. Barham?

Mr. Compton: Yes sir.

Commissioner Clements: Wherever there is a mill on the line in your territory, the milling in transit is extended?

Mr. Compton: It is.

Commissioner Clements: And that of course means to bring it into the mill point and send it out again in the form of a product at the total through rate from the point of origin to the ultimate destination?

Mr. Compton: It does.

Commissioner Clements: Whereas the rate in and the rate out to and from the milling point would be ordinarily something more than that.

Mr. Compton: That is true; yes sir.

Commissioner Clements: Why was that established; what is the basis of that?

Mr. Compton: Do you refer to the milling in transit in the south, say at Chattanooga and south—or do you refer to the milling in transit, at points in the wheat section; or both?

Commissioner Clements: I refer to it as it exists on the line
786 of the Louisville & Nashville Railroad. You have it at all points where there is a mill, not only where the Cumberland River is but at other places. Now, that does not seem to be a water competitive product. What is the cause of it?

Mr. Compton: My understanding of that matter is this: There is grain raised in Kentucky which is or was in excess of the immediate consumption in that particular territory, or in its particular surroundings. Mills started first to grind for toll; that is to say, a man paid so many pounds of wheat for grinding so many pounds of wheat into flour, for his consumption or use. When his grain gave out, then he must get his grain from some other place, which he did. If his capacity was greater than his ability to sell in his immediate neighborhood, he desired a market beyond.

Rates were given to him for the purpose oftaking the grain from the producer to the consumer, for consumption beyond. To put it into condition for consumption it must undergo the transposition from grain to mill products. It was a gradual start, beginning as I believe from the location of the little local mill, whether it was the grinding of flour, or whether it was the grinding of wheat.

At points in the south, say, like Cartersville, Marietta, Dalton,
down in that section, they raised a little corn. They had
787 small mills and could grind such little corn as was raised in that section. When railroads desired more business, desired to have this industry continue and run to its greatest possible extent, in order to give them some business, as well as to help the manufacturing industry, they made arrangements for them to come north and get grain from the grain section, in order that they might sell to the points beyond. I think it was found that if a man was given milling in transit on grain, because he started a toll mill, or primary mill, to grind corn, if he would make a pone of bread out of corn for consumption by people, then it might be reasonable to take wheat and convert it into flour, so that he might make a pone of bread out of flour: That is where this milling in transit started. It was the beginning of the grinding of wheat and corn into the product for consumption.

Later it comes along. Take a point like Atlanta. Atlanta did not have a mill until recent years. The practice of milling in transit had grown to such an extent that the people said "We can afford as an investment to start a flour mill to grind wheat and corn, for consumption in Atlanta and points beyond, because the milling in transit system seems to be so well grounded that it is reasonable to suppose it will continue and not be abolished."

788 Commissioner Clements: Did you hear Mr. Barham's statement this morning that reshipping was first started at Nashville; that other southern railroads protested against it; but that inasmuch as the Nashville, Chattanooga & St. Louis Railway would not take it out there, they put it in at other places.

Mr. Compton: I heard what Mr. Barham said.

Commissioner Clements: Do you agree in that, or differ from it?

Mr. Compton: I do not know the history of the milling business

Nashville by Mr. Noel and others, as explained by him. I be-
ve that flour was made very early in Nashville and shipped to the
utheast. In fact, I know it was. I have no doubt that Mr. Bar-
m's statement is entirely correct.

Commissioner Clements: You have been familiar with these mat-
rs a long time, from personal contact with them. Do you recall
e protest that was made by the other roads in the south against
e action of the N. C. & St. L. Railway at Nashville, before it was
tended to other places?

Mr. Compton: No sir.

Commissioner Clements: How do you manage to take care of
illing in transit? At how many places is it? There are numerous
places on the Louisville & Nashville Road, are there not?

Mr. Compton: Yes sir.

Commissioner Clements: And it applies to grain particu-
rly from the west, from the Ohio River and beyond, the Mississippi
iver and beyond, destined ultimately to southeastern points of
nsumption?

Mr. Compton: Not at all points.

Commissioner Clements: But at numerous points?

Mr. Compton: Yes sir; that is true.

Commissioner Clements: And in order to see that the proper
rough rate is observed, you have to have somewhat similar rules
d regulations to guard against the misuse of the milling in tran-
privilege, do you not?

Mr. Compton: Yes sir.

Commissioner Clements: Wherever it is located?

Mr. Compton: Yes sir, we do.

Commissioner Clements: You spoke this morning at considerable
ngth about the impracticability, and the immense confusion, the
possible situation that would be created by a demand to distribute
e reshipping privilege and broad cast it, as somebody said, about
er the country. In this same territory you referred to the neces-
y of back hauls, and the confusion which would result, and
numerous considerations which you mentioned. Now, would
there be any more practical difficulty in guarding against
the reshipping privilege than there is in regard to the milling
transit practice?

Mr. Compton: Yes sir, there would be—there would be substan-
ally more difficulty.

Commissioner Clements: You spoke about the immense police
rce to watch it.

Mr. Compton: Yes sir.

Commissioner Clements: Does it take any more to watch at a
ven place, relatively, the reshipping business, than it does the
illing in transit?

Mr. Compton: Yes sir. I will explain by referring to Atlanta.
t Atlanta they have one mill. If you have fifty shippers of grain
Atlanta, you have fifty times as much watching to do.

Again, mills are located in the southeast at points like Augusta,
lacon and Columbus. I am speaking now of the larger places,

comparatively few in number; whereas if you put in reshipping you would have to put in reshipping at any and all points that requested it. And the points in which you would have to put in the reshipping, would be many times more than those which now have milling in transit. And at each of the points at which you
791 put in reshipping arrangements there would be numerous dealers asking and expecting the arrangement to be applied to their business.

Commissioner Clements: Do you apply it at places where they now apply the reshipping privilege, to all sorts of shipments—less than carloads, for instance; and whether it goes into an elevator or not? Or do you confine it to such shipments as can be handled in car loads in and out?

Mr. Compton: The reshipping arrangements south of the Ohio River are applied at Nashville only. They are applied at that point for the dealers in Nashville generally. It is true there are more dealers than there are mills. We maintain at Nashville for the carload or less than carload reshipper a through rate from the Ohio River to destination, which generally in the southern states on grain food products are any quantity rates, believed to be so because they benefit the greater number of people. Ever since my observation of southern cities, I have held to the belief that the best adjustment of rates for the public at large in the south was any quantity rates on the so-called food products.

Commissioner Clements: So that at Nashville you maintain—you give the dealer there the benefit of the through rate, whether it is carload or less than carload, and whether it goes through an
792 elevator or not; and that therefore applies to every dealer in Nashville who handles these commodities in and out.

Mr. Compton: As to the persons, yes; as to the quantity, yes; as to the rule, ours is at Nashville that the business is to be handled; elevation will be paid to public and private elevators, and to grain handling stores or warehouses having sacking facilities—we apply it to all alike.

Commissioner Clements: Do you have any idea how many dealers there are that would come under that rule?

Mr. Compton: At Nashville?

Commissioner Clements: Yes.

Mr. Compton: I do not know how many dealers in Nashville; I think though it was testified to that there were about twenty-five.

Commissioner Clements: What is the basis of that elevator allowance, when grain is sacked in a warehouse? What is your idea of the justification for that?

Mr. Compton: So far as the elevation is concerned, Mr. Commissioner, it is the outgrowth of an arrangement that was started at Louisville in 1873. I remember myself when the gauge of all the southern roads was 5 feet, and the gauge north of the
793 Ohio River was 4 feet 8½ inches. All of the business moving from north to south had to be transferred from car to car, or the car hoisted and the trucks taken out, and a 5-foot gauge truck put under the car, if it was to move south. Most of the grain

was transferred, because the northern lines did not want their cars to get south and get into the wilderness. We had to transfer this grain from car to car by hand.

A Mr. Veerhoff, of Louisville, bought an elevator there, at the suggestion of the officials of the Louisville & Nashville Railroad, and he undertook the transfer of our grain at so much per hundred pounds, or per car. It was for the service rendered in the transfer of this business from the northern to a southern car that inaugurated the practice. That was extended later to all Ohio River points, and only in the last few years to Nashville; and at Nashville only in the case that elevation had not been previously paid at the Ohio River, or some point beyond.

If sacked grain is loaded at the elevators—which it is—then the elevator should be allowed elevation, as we call it, on the sacked grain, for the same reason that you pay it on the bulk grain. If that is done in an elevator, it should be done in a warehouse. If
794 a warehouse handles a bulk business the same as an elevator handles bulk business, and it has facilities for sacking this bulk business in the warehouse, the same as an elevator has, I think that is a justifiable reason for paying elevation on business from the warehouses, whether it be sacked or whether it be bulked.

Commissioner Clements: Well, what is it done for? Is it for any service rendered the railroad, or is it done to put these people on equality?

Mr. Compton: It is done for equalization purposes; the demand of the shippers. Of course, so far as the elevation is concerned, the Louisville & Nashville would be very glad to have it wiped out, and we are glad to do it, when the Commission, or the tribunal which now has the matter under consideration, decides it. I hope it will be finally decided so that the railroads will not have to pay this charge any longer.

Commissioner Clements: Are there any other questions to be asked Mr. Compton? That seems to be all.

CHARLES BARHAM, a witness previously sworn, resumed the stand for further examination, and testified as follows:

Commissioner Clements: Mr. Barham, you spoke this
795 morning about the milling in transit first being established by your road at Nashville; that it had spread, and that rather than discontinue, when the other roads protested against it—as I understood you to say, rather than discontinue and destroy or confiscate the property that had been put into it, you decided to hold on and let it go to other places instead of taking it out at Nashville. Is that what you said?

Mr. Barham: Understand, I spoke of what had been related to me by others. I was not in the employ of the Nashville, Chattanooga & St. Louis Railway at that time. That statement was made to me by the late General Freight Agent of the road.

Commissioner Clements: That is your understanding?

Mr. Barham: Yes sir.

Commissioner Clements: If the discontinuance of this practice at Nashville of reshipping would result in confiscation or great injury to establishments built up there, why would it not be wise to equalize the situation and remove any trouble by spreading or extending it to other places, as in milling in transit, and let these things live?

Mr. Barham: The essential difference between milling in transit and reshipping grain is this, it seems to me: When you mill grain in transit, there is a conversion; the grain loses its original
796 character and becomes a different commodity, which is flour, or meal or some other corn product. It then goes from the mill to the consumer.

When the grain is reshipped it moves from transfer point to transfer point, and is finally consumed in its original shape. That is essentially different. If you take grain from the Ohio River to Atlanta and mill it, it then becomes a product that goes from that mill to the consumer. If you take grain from the Ohio River to Chattanooga and reship it, the man buying that, having reshipping privileges, will in turn demand, or he may demand reshipping.

The answer to the statement that probably it could be limited, as Mr. Wimbish suggested this morning, by *confirming* it to one reshipping, lies in this: Say that the Atlanta man has reshipping. He is in the market for grain. We say there shall be only one movement to a transit point. Chattanooga does not produce grain, for example, to any great extent. There is some surplus but not a very marked surplus. The Chattanooga man goes west and also buys grain. The Chattanooga man comes to us and says, "We are on your line. Atlanta is in the market for grain. Why do you prevent our selling in Atlanta; why is it right that you should prevent our selling in Atlanta?" Then we concede it, and we
797 let him sell. Then the man at Macon wants to have grain. Atlanta says, "I want to sell the man at Macon. Why do you force the man at Macon to go west for his grain?" And we let Atlanta in. It is rather the creation of an endless chain which we are not strong enough to prevent.

Mr. Andrews: Mr. Barham, let me ask a question to see if I understand milling in transit. The milling in transit was granted voluntarily at Nashville?

Mr. Barham: Yes sir.

Mr. Andrews: The reshipping at Nashville you did not grant?

Mr. Barham: That was involuntary.

Mr. Andrews: That is, it was forced on you by competitive conditions on the river?

Mr. Barham: Yes sir.

Mr. Andrews: The other was a matter of grace, which you granted at Nashville?

Mr. Barham: Not only granted at Nashville, but voluntarily granted it at other points.

Mr. Andrews: Under the same conditions?

Mr. Barham: Yes sir.

Mr. McConnico: When you extended milling in transit, you only extended it at places where there were mills?

Mr. Barham: Yes sir.

798 Mr. McConnico: And in reshipping I understand the railroads do it at all markets of concentration?

Mr. Barham: We do not reship at all except at Nashville.

Mr. McConnico: And that is the only market of concentration or the only primary grain market?

Mr. Barham: No, not at all. We have not extended it because there is not the force of compelling competition at any other point. In other words, there is no philanthrophy in reshipping, and there is no use of a railroad man getting up and saying it is done because he loves Nashville, because it is not?

Mr. McConnico: What other primary markets are there on your line?

Mr. Barham: None south of the Ohio River and the Mississippi River. There is not a particle of philanthropy in this.

Commissioner Clements: You can make a concentrating market most anywhere, can you?

Mr. McConnico: No, there is no use of extending milling in transit to places where there is no mill.

Commissioner Clements: What I mean is, that Nashville could not remain what he calls it, a concentrating or primary market, according to this testimony, if you take away this privilege?

799 Mr. McConnico: We insist it can by water.

Mr. Barham: The grain production in Tennessee, according to the Year Book of the Department of Agriculture for 1909, was almost exactly 100,000,000 bushels. The production in Georgia during that year was, roughly speaking, seventy million. Tennessee is smaller in area and population than Georgia. If the production of grain in Georgia was relatively as great as it is in Tennessee, the production in Georgia would be 128,000,000 bushels, or 58,000,000 more than it actually was, or say, roughly, 58,000 car loads. That is a great deal more grain than Nashville ships.

Commissioner Clements: Undoubtedly there is a great deal more grain produced in Tennessee than Georgia, relatively, area per area. There is no doubt about that.

Are there any further questions? Have you anything to offer, Mr. Wimbish?

Mr. Wimbish: Nothing at all.

Commissioner Clements: Now, what is the proposition in respect to the further proceding in this matter.

Mr. Wimbish: The assignment, if your Honor can do so, of a date for argument, and the filing of briefs.

800 Commissioner Clements: Have you discussed it among yourselves in any way, so as to make any suggestion or agreement?

Mr. Andrews: I do not know that I will have the pleasure of arguing the case, so I cannot enter into any arrangement. If I am in it, I want to argue it orally.

Commissioner Clements: I assume that that would be so.

Mr. Wimbish: The suggestion has been made between counsel that we should like, if it meets with the convenience of the Commission, to argue it somewhere around the 25th of October; that instead of requiring the respondent to file a brief very early, with so many days to reply, and further time for reply, that service of briefs would be made by counsel each on the other, five or ten days prior to argument, and that reply can be made at the time of the oral argument. We had thought that would economize time and enable the case to be disposed of more promptly.

Commissioner Clements: How much time do you think you will need to prepare your birefs?

Mr. McConnico: We can exchange briefs with each other and have all briefs in by the 20th of October.

Mr. Wimbish: Briefs on each side to be served on each other by that date, and then we can make any reply we have to make at the oral argument.

Commissioner Clements: And we would have your briefs
801 on the 20th.

Mr. Wimbish: Yes sir.

Commissioner Clements: The Commission has on its hands a good many things, as you know, with regard to the investigation of the increased rates proposition, and matter of that sort. Whether we can find a day within the last eight or ten days of October to set down for oral argument in this case, or not, I would not want to vouch for at this moment, without looking at the calendar and having some little conference with other members of the Commission as to the disposition of our time with respect to these matters. But I will undertake to see that we find a day.

Mr. McConnico: I would like to ask that if you could not have it at that time, if you would not have it before November 10?

Mr. Wimbish: And I make this suggestion: If the argument is after the 1st of November, your Honor will allow briefs to be exchanged and filed ten days before oral argument.

Commissioner Clements: It has been our practice to set cases for oral argument within the first half of each month; and if we put it into November, it would probably be some time before the 15th.

802 I will try and find a date within the last week of October or within the first half of November. As soon as the date is determined, which will be just as soon as it can be done, you will all be notified.

Mr. Andrews: Briefs to be filed ten days before the date of oral argument.

Mr. McConnico: Unless the argument is held in October, when briefs will be filed by the 20th of October?

Commissioner Clements: Yes. With that understanding, the hearing so far as the taking of testimony is concerned will be closed.

(Thereupon, the hearing was closed.)

803 EXHIBIT INTERVENOR No. 1.

Affiant being duly sworn states:

My name is J. H. Wilkes; my residence White Bluff, Tenn., near Nashville. I am 72 years of age. I was in the grain business about 30 years beginning about 1875.

I have bought large quantities of corn and wheat on the Wabash River and on the Ohio River, and have shipped the same to Nashville by railroad; also to a limited extent by river.

I have bought corn and wheat in the Wabash Valley, and shipped the same to Henderson or Uniontown, Ky., where it was put on the railroad and brought to Nashville. My recollection is that the rate via boat and rail was somewhat higher than the direct boat rate, and that the railroad equalized the rate where there was a difference.

The railroad company back as far as 1875 had its soliciting agents at Nashville soliciting business from the grain men; and as an inducement to secure the traffic offered to equalize rates with the direct boat lines, and also offered better facilities for handling the grain at Nashville. The facilities to which I refer were sidetrack facilities, whereby the grain was placed right at my warehouse upon arrival. Other inducements to the handling of grain by rail was
804 that the grain arrived in better condition; and if there was any damage or loss in weight, the railroad company was here to settle claims promptly, whereas with the boats it was more difficult to get claims settled.

I think at the time that I began business in Nashville, there were five grain firms located here. B. S. Rhea & Son were the largest handlers of grain through Nashville. They handled practically their entire business by boat to Nashville and Johnsonville, at which points there were elevators owned by the railroads, and of which they were given the use free of charge.

While I bought grain occasionally as far west as St. Louis, the territory to which I looked for a supply was the Wabash Valley and the Ohio River, and I kept a man there constantly to buy grain for me. Mr. Rhea also kept a man at Shawneetown to buy grain in the Ohio and Wabash Valleys.

At that time the principal points in the southeast and south to which I shipped were Macon, Augusta, Charleston, Savannah, Wilmington, Spartanburg, Greenville, S. C., Columbia, S. C., Anderson, S. C., Moultrie, Ga., West Point, Ga., Montgomery and Selma, Ala. There was no reshipping from Nashville to Meridian or points west
thereof at that date, and I regarded Meridian as the "dead" line.
805 Mr. Rhea had quite a trade at Atlanta for certain kinds of corn which he made a specialty; and he was considered the largest dealer and boat owner in the trade.

The grain which was purchased by dealers located at the southern and southeastern points which I have named was distributed by them to points within a radius of say 50 miles from each place. At

that time, I heard no complaint as to reshipping practices not being extended to these points. The southeastern territory was regarded as a consuming territory.

There are now more than 50 firms located at Nashville, composed principally of men who have grown up in the grain business.

Mr. Rhea endeavored to control the grain trade of the Ohio and Wabash Valleys, both as a grain dealer and as a boatowner, and the railroad company in order to get the business had to compete with him in both capacities. In other words, they had to make rates which would equalize not only Mr. Rhea's prices on grain but the rates that his boats could afford to make.

The firm of B. S. Rhea & Son was in business prior to the time that I engaged in the grain business, and the junior member of that firm still continues the business.

806 The condition of my health is such that I am not physically able to make a trip to Washington.

[NOTARIAL SEAL.] J. H. WILKES.

STATE OF TENNESSEE,
County of Dickson:

Personally appeared before me J. H. Baker, a Notary Public in and for the State and county aforesaid, the above-named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed the same in my presence. Witness my hand and seal at White Bluff, Tenn., this 22d day of September, 1910.

My commission expires January 17, 1914.

J. W. BAKER,
Notary Public.

EXHIBIT INTERVENOR No. 2.

Affidavit of G. W. Ashcraft.

Affiant being duly sworn states:

I am 75 years of age, and reside in Nashville, Tenn. I have been on the river since I was 16 years of age, running between Louisville and Henderson for a considerable part of the time.

807 In 1856, I ran as clerk on a boat from Louisville to New Orleans. About 1858, I commenced clerking in the Louisville and Henderson trade, in which I remained three or four years. In 1863 and 1864, I was Master of the Steamer Mercury, in the Government employ running between Louisville and Nashville, and in the Tennessee River also. The Mercury was chartered by the Government for purposes of war. The traffic carried by the Mercury for the Government consisted of commissary stores, corn, hay and grain. The grain was obtained on the Ohio River, and some of it carried to Nashville, and some of it carried by the Tennessee River to Eastport. During this same time, there were hundreds of other boats handling grain from Ohio River points to Nashville; and also by the Tennessee River. Nearly all of the grain came from

Ohio River and Wabash River points. To give you an idea of the number of steamers bringing freight to Nashville off the Ohio River, the closest landing that I could at times make was at the old race track, which was two miles from the upper wharf. There were two wharves at Nashville, the upper and lower wharf. I have seen at a given time as many as four or five steamboats lying abreast at the wharf unloading, and other boats four or five deep, awaiting their turn to be unloaded at the wharf. I have seen this condition at both of the wharves at Nashville.

808 In January, 1871, I took charge of the coal mines at De Koven, Ky., a point located on the Ohio River about sixty miles above the mouth of the Cumberland River. It was the custom of the boats plying on the Ohio River and the Cumberland River to stop there for coal, and in that way I became familiar with the general character of their traffic and their points of destination. I was manager of the coal mine for five years, and during that time, the Cumberland River boats and the Tennessee River boats went up the Ohio River and the Wabash River for grain, which they brought back by the mines where they coaled, and they were loaded down with this grain, a majority of them destined to Nashville. Some of them went to Johnsonville, Tenn., where they had the same river rate.

During the five years I was Manager of the coal mine, there were many transient boats, including tow-boats, when there was a heavy grain season that handled exclusively this grain business from the Ohio and Wabash River to Nashville, in addition to the regular boats.

When I left the mine in 1875, I came to Nashville, and in November of that year, I began service as a clerk in the Upper Cumberland River. I remained there for two years during which time I was employed by a line of boats, consisting of four or five steamboats. These carried a great deal of grain from upper Cum-

809 berland points to Nashville. During that time, the grain merchants of Nashville had a custom of sending large quantities of empty sacks, which the boats put off for the shippers at various landings, where we got grain. It was the understanding that the grain was to be loaded by shippers and shipped to Nashville merchants, who furnished these sacks. The Nashville merchants employed a man, who was on the boat continuously to solicit the grain business for them, and he supplied sacks to every one who wanted them. A similar custom or practice prevailed on the lower Cumberland.

When I first quit the Upper Cumberland, I was in the employ of Capt. Ryman, and he put me on the Silverthorn, one of the boats running from Nashville to Evansville, Ind. During the season 1878-79 I remained on the Silverthorn. During the season of 1880-81, I was on the B. H. Cooke, running from Nashville to Evansville. During this period, we handled a great deal of grain from Ohio River points to Nashville, which constituted practically three fourths of the cargoes. The Silverthorn and the B. H. Cooke made one trip a week each between Evansville and Nashville. The Nash-

ville & Cairo Packet Co. and the Nashville & Evansville Packet Co. were then operated under one management. There were two boats running between Nashville and Cairo, and one in the Nash-
810 ville and Evansville trade, and each one of them made one trip a week. The boats which ran from Nashville to Cairo handled principally grain. The two boats had a capacity of about 400 tons each. It was the custom of boats running from Nashville to Cairo, in event they did not have a full cargo at Cairo, to go as high as Shawneetown, Ills. and other upper Ohio River points, and get a load of grain for Nashville. This was very frequently the case. During this time, there were transient boats and tow-boats, which handled grain exclusively from Ohio River points to Nashville, in addition to the packet lines.

During the 50's and up to the beginning of the Civil War there were regular packet lines plying the Ohio, Mississippi and Cumberland Rivers, between Pittsburg and Nashville, Cincinnati, and Nashville, Louisville and Nashville, Memphis and Nashville, St. Louis and Nashville and New Orleans and Nashville.

As late as the early 70's, the railroad situation in the south was such that the competition of the railroads for the business was not felt by the steamboat interests, and until that time, Nashville, Louisville and other River points were dependent upon river transportation.

When the Illinois Central Railroad began shipping grain into Cairo, I have seen the time when their yards were full of
811 cars loaded with grain, hay and flour, awaiting the arrival of boats to carry the traffic down the Mississippi and up the Ohio and Cumberland rivers. During my experience in the Ohio River in 1871, I have seen as many as seven or more boats, ranging in capacity from 1600 to 3000 tons each, loading at the Cairo wharf chiefly with grain and flour destined to New Orleans, Memphis and Nashville. The Nashville grain merchants during the early 70's had representatives or brokers at Cairo and other Ohio River points purchasing this grain and shipping it to Nashville by river. Nashville as far back as I can remember has been a concentration point for the marketing of grain produced on the Ohio, Cumberland, Wabash and Mississippi rivers.

During the early 70's, I recall that William Rahm, who was a large planter and buyer, J. E. Rankin, and L. Ruffner,—all of them Evansville capitalists—Brandies & Crawford and H. W. Verhoeff of Louisville, bought corn and wheat both in the Ohio and Wabash Valleys, which they shipped direct from points of purchase to such markets as Parkersburg, W. Va., Nashville, Tenn., Memphis, Tenn. and New Orleans. At that time, the grain which moved to Louisville and to Evansville was for local consumption only. There was no reshipping of grain from Louisville or Evansville to the
812 southeast, so far as I know. The traffic was carried by boat service as far in every direction as that service was available to reach the terminal of railroads which were in position to carry the traffic on to its destination either in the East or Southeast

As late as 1889, I operated a small boat in the Cumberland River, which brought grain from the Wabash Valley to Nashville.

G. W. ASHCRAFT.

STATE OF TENNESSEE,
County of Davidson, ss:

Personally appeared before me, C. R. Cockle, a Notary Public in and for the State and County aforesaid, the above named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed the same in my presence.

Witness my hand and seal this 22nd day of September, 1910.

My Commission expires Oct. 17, 1911.

[NOTARIAL SEAL.] C. R. COCKLE,
Notary Public.

813 EXHIBIT INTERVENOR No. 3.

Affidavit of S. S. Kerr.

S. S. Kerr, being duly sworn, states as follows:

My name is S. S. Kerr, and I reside in Nashville, Tennessee. I have been engaged in the grain business about twenty years. I have frequently purchased grain at Ohio River crossings, and in the vicinity of said crossings. I operate in the vicinity of Shawneetown and in tributary territory, in connection with the Shawneetown Elevator Company in the purchase and shipment of grain to the southeast. Since being in the grain business I have frequently chartered boats for the transportation of grain from this territory to Nashville, and occasionally have shipped the grain through to the southeast. The reason why I shipped the grain I speak of by boat was because I could get it carried cheaper to Nashville by boat. It originated at river landings, and might have been carried by a short boat haul to Evansville or other Ohio River crossings, and thence shipped by rail to Nashville, but it was carried by direct boat haul all the way cheaper than it could have been carried by boat and rail.

The Louisville & Nashville Railroad reaches Shawneetown, and I have shipped grain frequently from Shawneetown to Nashville by river, because I could do so cheaper than I could by the
814 L. & N. R. R.; the rate by boat to Nashville being 6 cents per hundred pounds, whereas the rate via the Louisville & Nashville Railroad to Nashville was 10 cents per hundred. The insurance was about 3/10ths of a cent per hundred pounds. I have during this present season purchased grain at Ohio River landings between Uniontown, Ky., and Paducah, and shipped a part of this grain via Nashville to southeastern territory. Mr. I. T. Rhea, is a much larger reshipper of grain to the southeast and the Carolina territory than I am. The Tennessee Central Railroad Co. has an incline to the water's edge on the Cumberland River at Nashville, which is accessible to all boat and barge lines plying on said river.

I have handled most of my grain brought by river, at this incline of the Tennessee Central, for the reason that there is no transfer charge, when loaded on cars to be shipped to the south and southeast; whereas at the Ryman elevator on the Louisville & Nashville tracks, there is a charge for transfer of about one cent per hundred which we have to pay. The rate from the Tennessee Central incline to Atlanta would be the local rate published by the Nashville, Chattanooga & St. Louis Railway.

I have handled corn frequently out of the Wabash River to Nashville at a rate of 7 cents per hundred to Nashville,—this included loading and unloading but not insurance. The insurance I
815 think would be about ½ cent per hundred pounds on this grain. The Louisville & Nashville Railroad crosses the Wabash River near where these shipments originated. The lower Wabash has always been one of the heaviest corn producing sections, and much of the grain raised there has been shipped to the southeast. It goes by river to Henderson, Ky., Uniontown, Ky., Mt. Vernon, Ind., and Paducah, Ky., from which places it is reshipped by rail to the south and southeast.

I have also frequently shipped grain from about 25 miles north of Cairo on the Mississippi River and also about 25 miles south of Cairo, to Nashville, for rates of about 9 cents per hundred pounds, exclusive of insurance.

S. S. KERR.

STATE OF TENNESSEE,
County of Davidson:

Personally appeared before me E. R. Cockle, a Notary Public in and for the said State and County, S. S. Kerr, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal this 22 day of September, 1910. My commission expires the 17 day of October, 1911.

[NOTARIAL SEAL.] C. R. COCKLE,
Notary Public.

816 EXHIBIT INTERVENOR No. 4.

Affidavit of Alex. S. Hard.

Affiant being duly sworn states:

My name is Alex. S. Hard. I am 67 years of age, and reside at 215 Sixth Ave. North, Nashville, Tennessee.

I have been an invalid for sixteen years, and have not been able to engage in any business during that time.

From 1865 to 1874, I was a clerk on the boats of the Nashville & Cairo Packet Co., plying between Nashville and Cairo. That company operated three boats with a capacity of about 400 or 500 tons. During the time that I was on the river, we carried a great deal of grain, originating at Cairo and at Ohio River and Cumberland River landings, to Nashville.

We brought both corn and wheat to Nashville for Rhea, Smith & Co., Frank Moulton & Co., and M. B. Pilcher & Bro.

At that time, all of the grain was delivered on the wharf, for the reason that there were no elevators at Nashville, and from the wharf it was hauled by drays to the N. C. & St. L. Ry. depot, if destined to the southeast. It was protected from the weather by tarpauline while on the wharf or drays; and while on the wharf additional protection against the weather was afforded by the use of skids. There
817 was a warehouse here running from College St. to Market St. about 75 feet in width, where the grain was stored by Nashville dealers.

Quite a considerable part of the grain which our boats brought to Nashville was billed through to the southeast, to such points as Atlanta, Macon, Savannah, Montgomery, Eufaula and Mobile, Ala.

Out of the through rate from Cairo to these points, the boat's proportion to Nashville was 12½ cents per hundred. For this rate of 12½ cents, the boat performed the transportation service and the loading at point of origin and unloading at Nashville.

Our boats on some occasions went 30 or 40 miles up the Mississippi River, above Cairo for grain to be brought to Nashville.

During this early period, there was no bridge across the Mississippi River, at Cairo, and no connection to the southeast by rail. The boat route was therefore the most available route for the carriage of this grain traffic.

The boats in the Cumberland River were dependent upon the grain traffic for a steady and reliable and heavy traffic, and while they solicited shipments of general merchandise, they put forth their utmost efforts to secure the transportation of grain.

818 During all the time that I was employed on the river between Cairo and Nashville, I continually witnessed the carriage of grain in large quantities by other boats which plied between Wabash and Ohio River landings and Nashville.

After I left the Cumberland River, I went to work with Noel's mill in the capacity of bookkeeper. Mr. Noel kept a man on the Ohio River to buy grain for his mill at Nashville. Mr. Noel owned two mills, the Elevator Mills and the Jackson Mills. The Elevator Mills were located upon the N. C. & St. L. Ry. and the L. & N. R. R., but Mr. Noel brought grain to Nashville by river for even the Elevator Mills. The product of Mr. Noel's mills was shipped to Atlanta, Macon, Rome, Montgomery, Selma and Eufaula.

It was the custom of the grain merchants of Nashville in the early times to distribute sacks both up and down the Cumberland River to take care of the grain crops contiguous to that river.

ALEX. S. HARD.

STATE OF TENNESSEE,
County of Davidson, ss:

Personally appeared before me C. R. Cockle, a Notary Public in and for said State and County, Alex. S. Hard, the above named affiant, who made oath that the facts stated in this foregoing affidavit are true.

819 Witness my hand and official seal this 22 day of September, 1910. My commission expires the 17 day of October, 1911.

[NOTARIAL SEAL.] C. R. COCKLE,
Notary Public.

EXHIBIT INTERVENOR No. 5.

Affidavit of George Doubleday.

Affiant being duly sworn states:

My name is George Doubleday. I am Manager of the Ryman Line, and live in Nashville, Tennessee. My line is composed of six boats and operates on the Cumberland and Ohio Rivers between Nashville, Tenn., Shawneetown, Illinois, Evansville, Ind., Paducah, Kentucky, and other Ohio River points. My line is also composed of one tow boat and 9 barges. The separate capacity of my barges is 56,000 pounds. My tow boat has the capacity of towing 4 or 5 barges loaded, and can make a trip from Nashville to Shawneetown and return in six days; the capacity of my packet boats are as follows:

The steamer Electra 7,500 bags of grain; the steamer Richardson 5,000 bags, the steamers Dunbar, Harley and Dudley 4,000
820 bag- each. The average quantity of grain to a sack or bag is 2½ bushels.

Affiant further states that the capacity of his cargoes in pounds is 3,430,000 lbs.

Affiant further states that if he was tendered weekly at Shawneetown during the grain season 3,430,000 pounds of grain he would make a rate of 6.3 cents a 100 pounds.

Affiant further states that during the grain season from Ohio River points to Nashville his cargoe consists of 6/7ths grain.

Affiant further states that during the grain season of 1907-8 he handled with the Electra and barge each trip for about three months 12,000 bags of grain, making in all 24 trips.

Affiant further states that for the last four years the Cumberland River has been navigable for about ten months in the year.

Affiant further states that from his knowledge of the Cumberland River situation and the available river tonnage in the way of barges and boats that are idle, that he could acquire sufficient tonnage to successfully transport during the grain season 25,000,000 bushels of grain between Shawneetown and Nashville, and that if he were tendered and assured this amount of grain during the grain
821 season, he would, as a river man, undertake to transport this quantity of grain between Shawneetown and Nashville at net rates, including insurance on this grain, of 6.3 cents per 100 pounds.

Affiant further states that if the Railroads transporting grain from Nashville to Atlanta would join with him under the conditions above stated, in issuing through bill of lading on such grain, that he would issue through bills of lading from either Shawneetown or Paducah, Ky., to Atlanta, Ga., on grain at 23.3 cents per 100 pounds.

Affiant further states that from his knowledge of the navigability

of the Cumberland River, he is of the opinion that this quantity of grain could be transported between the points above mentioned during the grain season, which season coincides with the navigable season of the river.

GEORGE DOUBLEDAY.

STATE OF TENNESSEE,
Davidson County:

Personally appeared before me R. Boyte C. Howell, a Notary Public in and for the State and County aforesaid, George Doubleday, the above named affiant, who made oath that the facts stated in the foregoing affidavit are true.

822 Witness my hand and official seal, this 23rd day of September, 1910.

My commission expires on the 9th day of October, 1911.

[NOTARIAL SEAL.] R. BOYTE C. HOWELL,
Notary Public.

Notary fee 25c. paid.

823 United States Commerce Court. Filed Oct. 18, 1911. G. F. Snyder, Clerk.

EXHIBIT 1, MAJOR STAHLMAN.

See Testimony, P. 523.

Mem. of Advertisement of River Steamers, Taken from Files of the Union & American, Commencing January 1, 1870.

1870.

Jan. 1. Nashville & Cairo Packet Company. Steamers Tyrone, John Lumsden and Talisman every Monday, Wednesday and Friday, Reduced rates to St. Louis, Chicago and all points on Missouri River; also to Memphis, Napoleon, Vicksburg, Red River and New Orleans, and signing through bills of lading to all the above points.

Freight taken to all available points on the Arkansas and White Rivers &c.

Jan'y 1. Regular Packet, from Nashville to Evansville, and all intermediate points on Cumberland and Ohio Rivers.

The staunch passenger and freight steamer "Alpha" will ply as above during the season, making weekly trips leaving Nashville every Tuesday evening at 4 o'clock, &c.

T. G. RYMAN, *Master.*

Jan. 4. "John Lumsden" for Cairo, St. Louis, Memphis and New Orleans.
"Alpha" for Smithland and Evansville.
"Spray" for Evansville, Louisville and Cincinnati.

Jan'y 7. "Ella Hughes" for up river points.

Jan'y 9. "Emma Floyd" for Louisville and Cincinnati.
March 5. "Armada," Independent Packet for Paducah and Cairo.
Ap'l 5. "Lawrence" for Louisville and Cincinnati.
Ap'l 6. "Robert Moore" for Evansville, Louisville and Cincinnati.

824

1870.

May 4. "Kate Putnam," for Louisville, Cincinnati & Pittsburg.
"Lewellin" for Evansville direct.
May 6. "Armada" for Paducah and Cairo;
"Lawrence" for Evansville, Louisville and Cincinnati.
"Reserve" for Pittsburg, direct.
"Talisman" for Cairo St. Louis, Memphis and New Orleans.
May 31. "Mallie Ragon" for Evansville.
"Lumsden" for Cairo, St. Louis, etc.
July 22. "Mollie Gratz" for Paducah, Evansville and Louisville.
"Umpire" for Cairo, Memphis &c.

Nashville and Cairo Packet Company's ad. carried daily throughout the season.

1870.

Dec. 19. "Ella Hughes" for up river points.
"Tyrone" for Paducah, Cairo, St. Louis, Memphis and New Orleans.

1871.

Feb. 14. "Eddyville" for Smithland and Evansville.
"Nashville" for Louisville and Cincinnati.
July 12. "Ella Hughes" for Cairo, St. Louis and New Orleans.

Nashville and Cairo Packet Co.'s ad. carried daily.

825

1872.

Ap'l 27. "Tennessee River Weekly Packet.

Str. Dick Johnson. Lee Howell, Cdr.

Leaves Johnsonville for Eastport and all intermediate landings on Wednesday. For Florence, Eastport, &c. on Saturday.

Freight billed through and rates guaranteed.

Nashville has long felt the want of regular and reliable connections with the Tennessee River. The Johnson is new, light draft and built expressly for this river, and in the trade to stay. Through bills of lading issued and special rates given at the freight office of the N. & W. Railroad.

CHAS. W. ANDERSON,
Gen. Agt."

(This ad. carried daily from Ap'l 27 to May 10, 1872.)

Nashville & Cairo Packet Co.'s ad. carried daily to June 11th.

I. C. C. No. A-11463
(Cancels I. C. C. No. A-11262.)

Louisville & Nashville R. R. Co.

Defendant's Exhibit No. 26 9.
C. B. Campbell - Asst. Gen'l Frt. Agt.

OFFICE OF THE GENERAL FREIGHT AGENT.

R. C. CIRCULAR No. 2915.

(Cancels R. C. Circular No. 2745, of January 1, 1910.)

RULES TO GOVERN FORWARDING AND RESHIPPING OF GRAIN AND GRAIN PRODUCTS TO THE SOUTHEAST, NASHVILLE AND ESTILL SPRINGS, TENN., FROM AND THROUGH LOUISVILLE, KY.

1. On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2, destined to all points **located in Southeastern Territory, including Nashville and Estill Springs, Tenn.** (see Section 14), (**except L. & N. R. R. local stations and Pensacola, Fla.**), proportional rates will be assessed made **two (2) cents** per 100 lbs. or **four (4) cents** per barrel less than the regular tariff rates from Louisville, Ky. (**proper**), in effect at date of shipment of the Grain or Grain Products from point of origin, subject to the conditions shown in these rules, EXCEPT THAT PROPORTIONAL RATES WILL NOT BE APPLIED ON SHIPMENTS OF GRAIN OR GRAIN PRODUCTS ON WHICH MILLING-IN-TRANSIT OR TRANSIT PRIVILEGES HAVE BEEN ACCORDED AT POINTS NORTH OF THE OHIO RIVER AND EAST OF THE ILLINOIS-INDIANA STATE LINE.

2. No proportional rates will be allowed from the following-described territory:

(a) All points east of the Indiana-Illinois State Line.

(b) Chicago and Cook County, Illinois, Junctions, including South Chicago, Kankakee, Joliet, and Coster, Ill., or from beyond via those junctions.

(c) Sioux City, Lemars, Iowa, or local points on the Illinois Central Railroad west of Dubuque, Iowa.

(d) Points in the States of **Wisconsin, Minnesota, and South Dakota.**

RULES TO GOVERN FORWARDING AND RESHIPPING OF GRAIN AND GRAIN PRODUCTS TO THE SOUTHEAST, NASHVILLE AND ESTILL SPRINGS, TENN., FROM AND THROUGH LOUISVILLE, KY.

1. On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2, destined to all points **located in Southeastern Territory, including Nashville and Estill Springs, Tenn.** (see Section 14), (**except L. & N. R. R. local stations and Pensacola, Fla.**), proportional rates will be assessed made **two (2) cents** per 100 lbs. or **four (4) cents** per barrel less than the regular tariff rates from Louisville, Ky. (**proper**), in effect at date of shipment of the Grain or Grain Products from point of origin, subject to the conditions shown in these rules, EXCEPT THAT PROPORTIONAL RATES WILL NOT BE APPLIED ON SHIPMENTS OF GRAIN OR GRAIN PRODUCTS ON WHICH MILLING-IN-TRANSIT OR TRANSIT PRIVILEGES HAVE BEEN ACCORDED AT POINTS NORTH OF THE OHIO RIVER AND EAST OF THE ILLINOIS-INDIANA STATE LINE.

2. No proportional rates will be allowed from the following-described territory:

(a) All points east of the Indiana-Illinois State Line.

(b) Chicago and Cook County, Illinois, Junctions, including South Chicago, Kankakee, Joliet, and Coster, Ill., or from beyond via those junctions.

(c) Sioux City, Lemars, Iowa, or local points on the Illinois Central Railroad west of Dubuque, Iowa.

(d) Points in the States of Wisconsin, Minnesota, and South Dakota.

3. (a) Transit privileges mean the stopping, storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee or destination, and will apply only to such Grain or Grain Products as pass through elevators (public or private), warehouses, or mills.

(b) **On through consigned shipments of Grain or Grain Products**: by which is meant shipments covered by

Louisville, Ky., on a regular transfer slip, which must show point of origin from which bill of lading was issued. Through consigned shipments stopped in railroad yards for inspection in original cars will be considered through shipments, and will be handled on established through rates.

(c) On shipments of track Grain or Grain Products, originally consigned to Louisville, Ky., the identity must be preserved in each instance, whether forwarded in the same car or transferred, at the instance of the carrier, through an elevator, warehouse, mill, or direct from car to car (and not stopped or unloaded for storage in an elevator, warehouse, or mill), and such shipments shall be treated as through shipments.

4. Grain or Grain Products, arriving at Louisville, Ky., consigned direct or subsequently ordered to public or private elevators, warehouses, mills, or malt houses, will be subject to the inbound road's tariff rates.

5. **On business reshipped on original expense bills.**—When Grain or Grain Products are offered for reshipment within six months after date of original inbound paid expense bills, proportional rates will be assessed, subject to the conditions shown in these rules.

(Continued on page 2.)

ISSUED MARCH 23, 1910. **EFFECTIVE APRIL 26, 1910.**

ISSUED BY

D. M. GOODWYN, General Freight Agent,

LOUISVILLE, KY.

Station Tariff File
Compartment No. 11.

827

300—3-22-10-1447. J. P. M. & Co.

6. Within thirty days from the date of expense bills shippers will be required to present to the inspector of the Southern Weighing and Inspection Bureau for approval the original expense bills, or, if shippers desire to retain possession of the original expense bills, such original can be released by presenting to the inspector a legible pen-and-ink copy, together with the original. If the copy is found correct the inspector will accept same, canceling the original.

The inspector by means of a rubber stamp, signed in ink by the inspector, will indicate on the original expense bill, or the approved copy thereof, the character of the rate to which the shipment from Louisville, Ky., is entitled.

7. All elevators, warehouses, mills, and reshippers shall keep records of receipts and shipments, including those by boats, wagons, or other means, as hereinafter mentioned, upon forms prescribed or approved by the Manager of the Southern Weighing and Inspection Bureau, and affidavits as to the accuracy of such records shall be furnished when required.

The traffic shall be subject to the supervision of an inspector or inspectors who shall at all times have access to the records of the railroads, elevators, warehouses, mills, or reshippers, for the purpose of determining the accuracy thereof, as well as the faithful observance of these rules.

The duties of the inspector shall be:

(a) To check, compare, and verify the inbound road's expense bills.

(b) To keep a record, or verify the records kept by the railroads, elevators, warehouses, mills, and reshippers, of the total receipts of Grain and Grain Products unloaded by such warehouses, elevators, mills, or reshippers, including receipts by boats, wagons, and other means.

(c) To keep a record, or verify the records kept by the railroads, elevators, warehouses, mills, or reshippers, of the actual amount of Grain and Grain Products loaded out by such elevators, warehouses, mills, or reshippers, including that which may be forwarded by wagons or other means.

(d) When Grain or Grain Products are loaded out by a warehouse, elevator, mill, or reshipper, including that which may be forwarded by boats or that which may be forwarded by wagons or other means, original inbound records of equivalent and corresponding tonnage shall, at that time, be canceled by the shipper, said cancellation to be then or subsequently verified by the inspectors as further herein provided.

There shall be no substitution of tonnage brought in by boats or wagons or by rail from non-transit points for tonnage brought in on transit or proportional rates.

(e) Expense bills representing Grain or Grain Products delivered for local consumption shall not be available for reshipping and must be immediately canceled by the holder thereof.

(f) The inspector shall, as frequently as may be necessary to accomplish the purpose, verify the cancellation of surplus tonnage held by any elevator, warehouse, mill, or reshipper over and above the amount of Grain or Grain Products in possession of said elevator, warehouse, mill, or reshipper, as provided in Section (d), and in considering the amount of tonnage entitled to reshipment, not only paid but unpaid and accrued expense bills shall be taken into account.

(g) Expense bills for Grain or Grain Products must be accompanied, when tendered for reshipment, by a certificate in the following form, to be signed by the shipper:

RESHIPPING CERTIFICATE.

CONDITIONS OF CERTIFICATE REFERRED TO IN SECTION 7 (g).

Transit privileges upon Grain and Grain Products mean the stopping for storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee and destination, and will only apply to such Grain and Grain Products as pass through elevators (public or private), warehouses, or mills.

There shall be no substitution of tonnage of Grain or Grain Products brought in by boat or wagon, or by rail from non-transit points, for Grain or Grain Products brought in by rail entitled to transit privileges.

Expense bills will not be valid for transit privileges where the Grain or Grain Products covered by said expense bill has been delivered for local consumption, and such expense bill shall be canceled by the holder thereof. The reshippers shall also from time to time cancel any surplus tonnage over and above the amount of Grain or Grain Products that may be held by them.

Expense bills representative of the property reshipped must be surrendered. Corn for Corn, Oats for Oats, etc., except that a shipment consisting of a mixture of unlike Grains or Grain Products shall be billed as a mixture, and tonnage in kind surrendered in proportion to its ingredients.

A transfer of expense bills between dealers will be permitted only where the ownership of the Grain or Grain Products is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversion, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

A milling, storage, or cleaning in transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward at transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rate. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise."

EXTRACT FROM LETTER OF COMMISSIONER E. E. CLARK, OF THE I. C. C., IN EXPLANATION OF THE ABOVE RULE.

"The Commission recognizes the commercial difficulty of preserving the identity of each car load of [illegible] commodity. . . . A carrier may ship grain from several different points of origin to a transit point where it may all go into the same bin, and it may forward out of that bin the same kind of grain under its transit rate, provided it forwards on the rate from a given point of origin no greater amount of the same kind of grain or its product than is shipped in from that point, and provided also that the grain that was shipped in from that point has not been locally consumed or otherwise disposed of. We do not think it is permissible or lawful to forward on the remainder of a transit rate grain or other commodity [illegible]

which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward at transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. . . . . These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise."

EXTRACT FROM LETTER OF COMMISSIONER E. E. CLARK, OF THE I. C. C., IN EXPLANATION OF THE ABOVE RULE.

"The Commission recognizes the commercial difficulty of preserving the identity of each car load of bulk commodity. . . . . A carrier may ship grain from several different points of origin to a transit point where it may all go into the same bin, and it may forward out of that bin the same kind of grain under its transit rate, provided it forwards on the rate from a given point of origin no greater amount of the same kind of grain or its product than is shipped in from that point, and provided also that the grain that was shipped in from that point has not been used on the remainder of a transit rate grain or other commodity that did not come into that point under a transit rate. For example, we think it unlawful for a carrier to grant a transit privilege at a certain point where there is both rail and water transportation, and to permit grain that comes in under its transit privilege to be consumed locally and grain that comes in by water or other transportation lines to be substituted for it and forwarded from that point on the remainder of the transit rate. . . . . It is not a question of difference of opinion as to what is a better way of commercially handling the commodities; it is a question of what the carrier and the shipper, both of whom are amenable to the terms of the law, may properly do within the limits of that law."

FILES 28828 and 208116, 224015, 216021 (Wisconsin excepted), 280232, Sub-pad 6; 314000, Sub-pad 4 (Cancellation of Hay); 350023 (Revision of Points of Origin), 422859, 368883 (Estill Springs), 363798 (Through Rates from Points of Origin; Revision of Rules), 458305 (Reshipping at Points North of Ohio River Excepted).

Exhibit X M - to Petition

I. C. C. No. A-11459.
Cancels I. C. C. No. A-11291

Louisville & Nashville R. R. Co.

OFFICE OF THE GENERAL FREIGHT AGENT.

Defendants' Exhibit No. 8. C. B. Quinton F.S. 2-3

R. C. CIRCULAR No. 2898.

(Cancels R. C. Circular No. 2763, of February 1, 1910.)

RESHIPPING AT HENDERSON, KY., AND EVANSVILLE, IND., TO SOUTHEASTERN AND CAROLINA TERRITORIES OF GRAIN AND GRAIN PRODUCTS.

1. (a) On shipments of Grain, or milled products of Grain, drawn into Henderson, Ky., or Evansville, Ind., by rail, from points north of the Ohio River or west of the Mississippi River, including Belleville, Ill., and stations on the St. Louis Division and Branches (see Section 14) (except as otherwise provided herein), and reshipped via the L. & N. R. R. to points in Southeastern or Carolina Territories, including Nashville, Tenn. (see Section 15), except L. & N. R. R. local stations, and including Grain reshipped to Clarksville, Tenn., tariff rates into and out of Henderson, Ky., or Evansville, Ind., will be charged.

(b) When such Grain or milled products of Grain are reshipped from Evansville, Ind., or Henderson, Ky., this Company will apply from East St. Louis, Ill., Belleville, Ill., or other junction or local points at which the Grain, or milled products of Grain, was delivered to it, to final destination, the through rates in effect at date of shipment of the Grain or milled product of Grain from point of origin, subject to the conditions shown in these rules.

2. (a) On shipments of Grain drawn into Henderson, Ky., via the L. & N. R. R. from Rahms and Vaughan, Ind., or from Evansville, Ind., coming into Evansville from River Landings, and reshipped via the L. & N. R. R. to points in Southeastern or Carolina Territories, including Nashville and Clarksville, Tenn. (see Section 15), and L. & N. R. R. local stations (see Section 14), to which the rates from Evansville, Ind., and Henderson, Ky., are the same, tariff rates from Rahms and Vaughan, Ind., or from Evansville to Henderson will be charged and tariff rate from Henderson, Ky., to final destination on the reshipment, in effect at date of shipment of the grain from point of origin, will be assessed.

(b) When such Grain is reshipped from Henderson, Ky., this Company will refund to the Henderson reshipper the amount charged for the haul on the Grain from Rahms, Vaughan, or Evansville, Ind., to Henderson, Ky., subject to the conditions shown in these rules.

3. On shipments of Corn or Wheat, in car loads, drawn into Evansville, Ind., or Henderson, Ky., by rail, from Maunie, Ill. (when drawn from territory actually tributary [illegible]

1. (a) On shipments of Grain, or milled products of Grain, drawn into Henderson, Ky., or Evansville, Ind., by rail, from points north of the Ohio River or west of the Mississippi River, including Belleville, Ill., and stations on the St. Louis Division and Branches (see Section 14) (except as otherwise provided herein), and reshipped via the L. & N. R. R. to points in Southeastern or Carolina Territories, including Nashville, Tenn. (see Section 15), except L. & N. R. R. local stations, and including Grain reshipped to Clarksville, Tenn., tariff rates into and out of Henderson, Ky., or Evansville, Ind., will be charged.

(b) When such Grain or milled products of Grain are reshipped from Evansville, Ind., or Henderson, Ky., this Company will apply from East St. Louis, Ill., Belleville, Ill., or other junction or local points at which the Grain, or milled products of Grain, was delivered to it, to final destination, the through rates in effect at date of shipment of the Grain or milled product of Grain from point of origin, subject to the conditions shown in these rules.

2. (a) On shipments of Grain drawn into Henderson, Ky., via the L. & N. R. R. from Rahms and Vaughan, Ind., or from Evansville, Ind., coming into Evansville from River Landings, and reshipped via the L. & N. R. R. to points in Southeastern or Carolina Territories, including Nashville and Clarksville, Tenn. (see Section 15), and L. & N. R. R. local stations (see Section 14), to which the rates from Evansville, Ind., and Henderson, Ky., are the same, tariff rates from Rahms and Vaughan, Ind., or from Evansville to Henderson will be charged and tariff rate from Henderson, Ky., to final destination on the reshipment, in effect at date of shipment of the grain from point of origin, will be assessed.

(b) When such Grain is reshipped from Henderson, Ky., this Company will refund to the Henderson reshipper the amount charged for the haul on the Grain from Rahms, Vaughan, or Evansville, Ind., to Henderson, Ky., subject to the conditions shown in these rules.

3. On shipments of Corn or Wheat, in car loads, drawn into Evansville, Ind., or Henderson, Ky., by rail, from Maunie, Ill. (when drawn from territory actually tributary to the Wabash River, providing same is drawn into Maunie, Ill., from distances of not less than 5 miles), and reshipped via the L. & N. R. R. to points in Southeastern or Carolina Territories, including Nashville and Clarksville, Tenn. (see Section 15), except L. & N. R. R. local stations, at tariff rates in effect at date of shipment of the Grain from point of origin, a net rate of two (2) cents per hundred pounds will be applied into Evansville, Ind., or Henderson, Ky., subject to the conditions shown in these rules.

4. (a) On shipments of Corn or Wheat, in car loads, drawn into Evansville, Ind., or Henderson, Ky., from L. & N. R. R. local stations on St. Louis Division in Indiana, north of Evansville, Ind. (see Section 14), except Mt. Vernon, Ind., and reshipped via the L. & N. R. R. to points located in Southeastern or Carolina Territories (see Section 15), except L. & N. R. R. local stations, at rates in effect at date of shipment of the Grain from point of origin, a net rate of two (2) cents per 100 pounds will be assessed on the Corn or Wheat into Evansville, Ind., or Henderson, Ky., subject to the conditions shown in these rules.

5. On shipments of Wheat and Corn, in car loads, drawn into Evansville, Ind., or Henderson, Ky., from Carmi, Epworth, or Maunie, Ill., and reshipped via the L. & N. R. R. to points located in Southeastern or Carolina Territories (see Section 15), except L. & N. R. R. local stations, at rates in effect at date of shipment of the Grain from point of origin, a net rate of three (3) cents per 100 pounds will be assessed on the Corn or Wheat into Evansville, Ind., or Henderson, Ky., subject to the conditions shown in these rules.

6. The arrangements authorized in Sections 1 to 5 inclusive will be applied only when the Grain is shipped from Henderson, Ky., or Evansville, Ind., within six months after date of original paid expense bills covering the Grain inbound.

(Continued on Page 2.)

ISSUED MARCH 22, 1910. **EFFECTIVE APRIL 25, 1910.**

ISSUED BY

D. M. GOODWYN, GENERAL FREIGHT AGENT,

LOUISVILLE, KY.

Station Tariff File
Compartment No. 11.

7. (a) Transit privileges on Grain, or Grain Products, mean the stopping, storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee or destination, and will apply only to such Grain, or Grain Products, as passes through elevators (public or private), warehouses or mills.

(b) Through consigned shipments of Grain, or Grain Products, stopped in railroad yards for inspection in original cars will be considered through shipments and will be handled on established through rates.

(c) On shipments of Track Grain, or Grain Products, originally consigned to Henderson or Evansville, the identity must be preserved in each instance, whether forwarded in the same car or transferred, at the instance of the carrier, through an elevator, warehouse, mill, or direct from car to car (and not stopped or unloaded for storage in an elevator, warehouse or mill); and such shipments shall be treated as through shipments.

8. All elevators, warehouses, mills and reshippers shall keep records of receipts and shipments, including those by boats, wagons, or other means, as hereinafter mentioned, upon forms prescribed or approved by the Manager of the Southern Weighing and Inspection Bureau, and affidavits as to the accuracy of such records shall be furnished when required.

The traffic shall be subject to the supervision of an inspector or inspectors, who shall at all times have access to the records of the railroads, elevators, warehouses, mills, or reshippers for the purpose of determining the accuracy thereof, as well as the faithful observance of these rules.

The duties of the inspector shall be:

(a) To check, compare, and verify the inbound road's expense bills.

(b) To keep a record of, or verify the records kept by the railroads, elevators, warehouses, mills, and reshippers, the total receipts of Grain or Grain Products unloaded by such warehouses, elevators, mills, or reshippers, including receipts by boats, wagons, and other means.

(c) To keep a record of, or to verify the records kept by the railroads, elevators, warehouses, mills, or reshippers, of the actual amount of Grain, or Grain Products, loaded out by such elevators, warehouses, mills, or reshippers, including that which may be forwarded by wagons, or other means.

(d) When Grain, or Grain Products, is loaded out by a warehouse, elevator, mill, or reshipper, including that which may be forwarded by boats or that which may be forwarded by wagons or other means, original inbound records of equivalent and corresponding tonnage shall, at that time, be canceled by the shipper, said cancellation to be then or subsequently verified by the inspectors as further herein provided.

There shall be no substitution of tonnage of Grain, or Grain Products, brought in by boats or wagons or by rail from non-transit points for Grain brought in on transit rates.

(e) Expense bills representing Grain, or Grain Products, delivered for local consumption shall not be available for reshipping and must be immediately canceled by the holder thereof.

(f) The inspector shall, as frequently as may be necessary to accomplish the purpose, verify the cancellation of surplus tonnage held by any elevator, warehouse, mill, or reshipper, over and above the amount of Grain, or Grain Products, in possession of said elevator, warehouse, mill or reshipper, as provided in Section (d), and in considering the amount of tonnage entitled to reshipment, not only paid, but unpaid and accrued expense bills shall be taken into account.

(g) Expense bills for Grain, or Grain Products, must be accompanied, when tendered for reshipment, by a certificate in the following form, to be signed by the shipper:

RESHIPPING CERTIFICATE

13. The application of the rates authorized in these rules will be effected by claim. Claims must include statements showing movement of the Grain or Grain Products into and out of Henderson or Evansville, to which the agent will attach original inbound paid expense bills for Grain, or Grain Products, and shippers' certificates, previously surrendered as required in Section (g) of Rule 8.

14. For stations on the L. & N. R. R. referred to herein see Agent F. A. Leland's Official Station List (I. C. C. No. 652), L. & N. R. R. G. F. O. No. 1390, supplements thereto or reissues thereof.

15. For stations located in Southeastern and Carolina Territories referred to herein, see Agent M. P. Washburn's Territorial Directory No. 1 (I. C. C. No. 11), L. & N. R. R. G. F. O. No. 1175, supplements thereto or reissues.

16. These rules do not authorize reshipping at Evansville, Ind., and Henderson, Ky., of Grain drawn from Mt. Vernon, Ind.

CONDITIONS OF CERTIFICATE REFERRED TO IN SECTION 8 (g).

Transit privileges upon Grain, and Grain Products, mean the stopping for storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee and destination, and will only apply to such Grain, and Grain Products, as passes through elevators (public or private), warehouses, or mills.

There shall be no substitution of tonnage of Grain, or Grain Products, brought in by boat or wagon or by rail from non-transit points, for Grain or Grain Products brought in by rail entitled to transit privileges.

Expense bills will not be valid for transit privileges where the Grain, or Grain Products, covered by said expense bill has been delivered for local consumption, and such expense bill shall be canceled by the holder thereof. The reshippers shall also, from time to time, cancel any surplus tonnage over and above the amount of Grain, or Grain Products, that may be held by them.

Expense bills representative of the property reshipped must be surrendered, corn for corn, oats for oats, etc., except that a shipment consisting of a mixture of unlike grains, or Grain Products, shall be billed as a mixture and tonnage in kind surrendered in proportion to its ingredients.

A transfer of expense bills between dealers will be permitted only where the ownership of the Grain, or Grain Products, is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible to [illegible]

(a) To check, compare, and verify the inbound road's expense bills.

Expense bills will not be valid for transit privileges where the Grain, or Grain Products, covered by said expense bill has been delivered for local consumption, and such expense bill shall be canceled by the holder thereof. The reshippers shall also, from time to time, cancel any surplus tonnage over and above the amount of Grain, or Grain Products, that may be held by them.

Expense bills representative of the property reshipped must be surrendered, corn for corn, oats for oats, etc., except that a shipment consisting of a mixture of unlike grains, or Grain Products, shall be billed as a mixture and tonnage in kind surrendered in proportion to its ingredients.

A transfer of expense bills between dealers will be permitted only where the ownership of the Grain, or Grain Products, is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward on transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. . . . . These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise."

EXTRACT FROM LETTER OF COMMISSIONER E E. CLARK, OF THE I. C. C., IN EXPLANATION OF THE ABOVE RULE

"The Commission recognizes the commercial difficulty of preserving the identity of each car load of bulk commodity. . . . A carrier may ship grain from several different points of origin to a transit point where it may all go into the same bin, and it may forward out of that bin the same kind of grain under its transit rate, provided it forwards on the rate from a given point of origin no greater amount of the same kind of grain or its product than is shipped in from that point, and provided also that the grain that was shipped in from that point has not been locally consumed or otherwise disposed of. We do not think it is permissible or lawful to forward on the remainder of a transit rate grain or other commodity that did not come into that point under a transit rate. For example, we think it unlawful for a carrier to grant a transit privilege at a certain point where there is both rail and water transportation, and to permit grain that comes in under its transit privilege to be consumed locally, and grain that comes in by water or other transportation lines to be substituted for it and forwarded from that point on the remainder of the transit rate. . . It is not a question of difference of opinion as to what is a better way of commercially handling the commodities; it is a question of what the carrier and the shipper, both of whom are amenable to the terms of the law may properly do within the limits of that law."

Files { 36379S (Through Rates—Revision of Rules).
218693, 215193.
314000 S. P. 4 (Cancellation of Hay).
25360—Rahms and Vaughan.
96514 (exception of Mt. Vernon)
215193 (Henderson—R. C. 2898).
338528 (Evansville—R. C. 2898).

No Supplement to this Tariff will be issued, except for the purpose of cancelling the Tariff.

Exhibit No. to Petition.

I. C. C. No. A-11464.
Cancels I. C. C. No. A-11263.

Louisville & Nashville R. R. Co.

Defendants Exhibit No. 10
C. B. Campbell. Apr 8 1924

OFFICE OF THE GENERAL FREIGHT AGENT.

R. C. CIRCULAR No. 2916.

(Cancels R. C. Circular No. 2746, of January 1, 1910.)

RULES TO GOVERN FORWARDING AND RESHIPPING OF GRAIN AND GRAIN PRODUCTS TO THE SOUTHEAST, FROM AND THROUGH CINCINNATI, OHIO, COVINGTON, CENTRAL COVINGTON, AND LATONIA, KY.

1. (a) On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2, destined to all points **located in Southeastern Territory** (see Section 14), **except Pensacola, Fla., L. & N. R. R. local stations and points in Montgomery Territory**), proportional rates will be assessed, made **two** (2) **cents** per 100 pounds or **four** (4) **cents** per barrel less than the regular tariff rates from Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky. (**proper**), in effect at date of shipment of the Grain or Grain Products from point of origin, subject to the conditions shown in these rules, EXCEPT THAT PROPORTIONAL RATES WILL NOT BE APPLIED ON SHIPMENTS OF GRAIN OR GRAIN PRODUCTS ON WHICH MILLING-IN-TRANSIT OR TRANSIT PRIVILEGES HAVE BEEN ACCORDED AT POINTS NORTH OF THE OHIO RIVER AND EAST OF THE ILLINOIS-INDIANA STATE LINE.

(b) On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2,

RULES TO GOVERN FORWARDING AND RESHIPPING OF GRAIN AND GRAIN PRODUCTS TO THE SOUTHEAST, FROM AND THROUGH CINCINNATI, OHIO, COVINGTON, CENTRAL COVINGTON, AND LATONIA, KY.

1. (a) On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2, destined to all points **located in Southeastern Territory** (see Section 14), (**except Pensacola, Fla., L. & N. R. R. local stations and points in Montgomery Territory**), proportional rates will be assessed, made **two** (**2**) **cents** per 100 pounds or **four** (**4**) **cents** per barrel less than the regular tariff rates from Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky. (**proper**), in effect at date of shipment of the Grain or Grain Products from point of origin, subject to the conditions shown in these rules, EXCEPT THAT PROPORTIONAL RATES WILL NOT BE APPLIED ON SHIPMENTS OF GRAIN OR GRAIN PRODUCTS ON WHICH MILLING-IN-TRANSIT OR TRANSIT PRIVILEGES HAVE BEEN ACCORDED AT POINTS NORTH OF THE OHIO RIVER AND EAST OF THE ILLINOIS-INDIANA STATE LINE.

(b) On shipments of Grain and Grain Products from points west of the Mississippi River and from points in Illinois, except as provided in Section 2, destined to all points **located in Montgomery Territory** (see Section 14), (**except L. & N. R. R. local stations**), proportional rates will be assessed, made **four** (**4**) **cents** per 100 pounds or **eight** (**8**) **cents** per barrel less than the regular tariff rates from Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky. (**proper**), in effect at date of shipment of the Grain or Grain Products from point of origin, subject to the conditions shown in these rules, EXCEPT THAT PROPORTIONAL RATES WILL NOT BE APPLIED ON SHIPMENTS OF GRAIN OR GRAIN PRODUCTS ON WHICH MILLING-IN-TRANSIT OR TRANSIT PRIVILEGES HAVE BEEN ACCORDED AT POINTS NORTH OF THE OHIO RIVER AND EAST OF THE ILLINOIS-INDIANA STATE LINE.

2. No proportional rates will be allowed from the following-described territory:

(a) All points east of the Indiana-Illinois State Line.

(b) Chicago and Cook County, Illinois, Junctions, including South Chicago, Kankakee, Joliet, and Coster, Ill., or from beyond via those junctions.

(c) Sioux City, Lemars, Iowa, or local points on the Illinois Central R. R. west of Dubuque, Iowa

(d) Points in the States of Wisconsin, Minnesota, and South Dakota.

3. (a) Transit privileges mean the stopping, storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee or destination, and will apply only to such Grain or Grain Products as pass through elevators (public or private), warehouses, or mills.

(b) **On through consigned shipments of Grain or Grain Products**; by which is meant shipments covered by through bills of lading issued from point of origin to point of final destination and received from a connecting line at Cincinnati, Ohio, or Covington, Ky., on a regular transfer slip, which must show point of origin from which bill of lading was issued. Through consigned shipments stopped in railroad yards for inspection in original cars will be considered through shipments, and will be handled on established through rates.

(c) On shipments of track Grain or Grain Products, originally consigned to Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky., the identity must be preserved in each instance, whether forwarded in the same car or transferred, at the instance of the carrier, through an elevator, warehouse, mill, or direct from car to car (and not stopped or unloaded for storage in an elevator, warehouse, or mill), and such shipments shall be treated as through shipments.

(Continued on page 2)

ISSUED MARCH 23, 1910. **EFFECTIVE APRIL 26, 1910.**

ISSUED BY

D. M. GOODWYN, GENERAL FREIGHT AGENT,

LOUISVILLE, KY.

Station Tariff File
Compartment No. 11

No. 3-2-10-1416

J. P. M. & Co.

4. Grain or Grain Products arriving at Cincinnati, O., Covington, Central Covington, or Latonia, Ky., consigned direct or subsequently ordered to public or private elevators, warehouses, mills, or malt houses, will be subject to the inbound road's tariff rates.

5. **On business reshipped on original expense bills.**—When Grain or Grain Products are offered for reshipment within six (6) months after date of original inbound paid expense bills, proportional rates will be assessed, subject to the conditions shown in these rules.

6. Within thirty days from the date of expense bills shippers will be required to present to the inspector of the Southern Weighing and Inspection Bureau for approval the original expense bills, or, if shippers desire to retain possession of the original expense bill, such original can be released by presenting to the inspector a legible typewritten or pen-and-ink copy, together with the original. If the copy is found correct the inspector will accept same, canceling the original.

The inspector, by means of a rubber stamp, signed in ink by the inspector, will indicate on the original expense bill, or the approved copy thereof, the character of the rate to which the shipment from Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky., is entitled.

7. All elevators, warehouses, mills, and reshippers shall keep records of receipts and shipments, including those by boats, wagons, or other means, as hereinafter mentioned, upon forms prescribed or approved by the Manager of the Southern Weighing and Inspection Bureau, and affidavits as to the accuracy of such records shall be furnished when required.

The traffic shall be subject to the supervision of an inspector or inspectors, who shall at all times have access to the records of the railroads, elevators, warehouses, mills, or reshippers for the purpose of determining the accuracy thereof, as well as the faithful observance of these rules.

The duties of the inspector shall be:

(**a**) To check, compare, and verify the inbound road's expense bills.

(**b**) To keep a record, or to verify the records kept by the railroads, elevators, warehouses, mills, and reshippers, of the total receipts of Grain and Grain Products unloaded by such warehouses, elevators, mills, or reshippers, including receipts by boats, wagons, and other means.

(**c**) To keep a record, or to verify the records kept by the railroads, elevators, warehouses, mills, or reshippers, of the actual amount of Grain and Grain Products loaded out by such elevators, warehouses, mills, or reshippers, including that which may be forwarded by wagons or other means.

(**d**) When Grain or Grain Products are loaded out by a warehouse, elevator, mill, or reshipper, including that which may be forwarded by boats or that which may be forwarded by wagons or other means, original inbound records of equivalent and corresponding tonnage shall, at that time, be canceled by the shipper, said cancellation to be then or subsequently verified by the inspectors as further herein provided.

There shall be no substitution of tonnage brought in by boats or wagons, or by rail from non-transit points, for tonnage brought in on transit or proportional rates.

(**e**) Expense bills representing Grain or Grain Products delivered for local consumption shall not be available for reshipping, and must be immediately canceled by the holder thereof.

(**f**) The inspector shall, as frequently as may be necessary to accomplish the purpose, verify the cancellation of surplus tonnage held by any elevator, warehouse, mill, or reshipper over and above the amount of Grain or Grain Products in possession of said elevator, warehouse, mill, or reshipper, as provided in Section (**d**), and in considering the amount of tonnage entitled to reshipment, not only paid but unpaid and accrued expense bills shall be taken into account.

(**g**) Expense bills for Grain or Grain Products must be accompanied, when tendered for reshipment, by a certificate in the following form, to be signed by the shipper:

12. **Bills of lading for commodities accorded reshipping privileges will be issued by the agent at Cincinnati, Ohio, Covington, Central Covington, or Latonia, Ky., at proportional rates in effect at date shipment moved from point of origin, as defined in Section 1.**

13. On shipments to **Carolina Territory** (see Section 14) there shall be no proportional rates allowed.

14. **For list of points situated in Southeastern Territory, Montgomery Subdivision, and Carolina Territory, see Territorial Directory No. 1 (I. C. C. No. 11), L. & N. R. R. G. F. O. No. 1175, supplements thereto or reissues thereof, issued by M. P. Washburn Agent.**

CONDITIONS OF CERTIFICATE REFERRED TO IN SECTION 7 (g).

Transit privileges upon Grain and Grain Products mean the stopping for storage, inspection, weighing, cleaning, clipping, sacking, grading, mixing, change of consignee and destination, and will only apply to such Grain and Grain Products as pass through elevators (public or private), warehouses, or mills.

There shall be no substitution of tonnage of Grain or Grain Products brought in by boat or wagon, or by rail from non-transit points, for Grain or Grain Products brought in by rail entitled to transit privileges.

Expense bills will not be valid for transit privileges where the Grain or Grain Products covered by said expense bill has been delivered for local consumption, and such expense bill shall be canceled by the holder thereof. The reshippers shall also, from time to time, cancel any surplus tonnage over and above the amount of Grain or Grain Products that may be held by them.

Expense bills representative of the property reshipped must be surrendered, Corn for Corn, Oats for Oats, etc., except that a shipment consisting of a mixture of unlike Grain or Grain Products shall be billed as a mixture and tonnage in kind surrendered in proportion to its ingredients.

A transfer of expense bills between dealers will be permitted only where the ownership of the Grain or Grain Products is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward at transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. [illegible]

A transfer of expense bills between dealers will be permitted only where the ownership of the Grain or Grain Products is also transferred by bona fide sale.

EXTRACTS FROM INTERSTATE COMMERCE COMMISSION TARIFF CIRCULAR 17-A.

"Each carrier shall publish with proper I. C. C. numbers, post and file separate tariffs, which shall contain in clear, plain and specific form and terms all terminal allowances, such as diversions, reconsignment and transit privileges, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increases or decreases the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith."

"A milling, storage, or cleaning in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward at transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each car load of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley. . . . . These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise."

EXTRACT FROM LETTER OF COMMISSIONER E. E. CLARK, OF THE I. C. C., IN EXPLANATION OF THE ABOVE RULE.

"The Commission recognizes the commercial difficulty of preserving the identity of each car load of bulk commodity. . . . . A carrier may ship Grain from several different points of origin to a transit point where it may all go into the same bin, and it may forward out of that bin the same kind of Grain under its transit rate, provided it forwards on the rate from a given point of origin no greater amount of the same kind of Grain or its product than is shipped in from that point, and provided also that the Grain that was shipped in from that point has not been locally consumed or otherwise disposed of. We do not think it is permissible or lawful to forward on the remainder of a transit rate Grain or other commodity that did not come into that point under a transit rate. For example, we think it unlawful for a carrier to grant a transit privilege at a certain point where there is both rail and water transportation, and to permit Grain that comes in under its transit privilege to be consumed locally and Grain that comes in by water or other transportation lines to be substituted for it and forwarded from that point on the remainder of the transit rate. . . . . It is not a question of difference of opinion as to what is a better way of commercially handling the commodities; it is a question of what the carrier and the shipper, both of whom are amenable to the terms of the law, may properly do within the limits of that law."

FILES 28526 and 206116, 224257 (Covington), 224015, 216021 (Wisconsin excepted), 280232, Sub-pad 6, 350023, 349516 (Typewritten copies), 314000, Sub-pad 4 (Cancellation of Hay), 350023 (Central Covington and Latonia and Revision of Points of Origin), 363798 (Through Rates from Points of Origin, Revision in Rules), 458308 (Reshipping at Points North of the Ohio River, Exception).

June 18. "Brill" for Cincinnati.
"Ella Hughes" for Cairo, St. Louis, Memphis and New Orl.
June 20. "Burkesville" for Cairo, St. Louis, Memphis and New Orleans.

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1872.

Jan'y 2. Nashville & Cairo Packet Co.'s ad. daily.
Jan'y 25th. "Umpire" for Cairo.
M'ch 8. "B. H. Burt" for Evansville direct.
M'ch 9. "West Wind" for Evansville direct.
"Ada Heilman" for Louisville, etc.
"Umpire" for up river points.
M'ch 24. "Emma Floyd" for Louisville and Cincinnati.
"B. H. Burt" for Evansville.
M'ch 26. "Messenger" for Pittsburgh direct.
"G. W. Thomas" for Evansville direct.
M'ch 29. "Ada Heilman" for Louisville and Cincinnati.
April 3. "Lawrence" for Louisville and Cincinnati.
"G. W. Thomas" for Evansville.
April 9. "R. W. Skillinger" for Cincinnati.
"Emma Floyd" for Louisville and Cincinnati.
Ap'l 12. "Regular White Collar Line," Str. Emma Floyd, for Louisville and Cincinnati.
Ap'l 24. "Brill" for Pittsburg.
"R. W. Skillinger" for Cincinnati.

(Here follow Defendant's Exhibits No. 9, 8, 10, marked pages 827 to 835.)

47. EXHIBIT MOORE No. 1. See Testimony, p. 12.

Mississippi Valley Tariff No. 3, Sou. Ry., I. C. C. #10238, Effective August 10th, 1906.

And Supplement No. 12, Mississippi Valley Tariff No. 3, Supplement 16 to I. C. C. 10238, Effective March 10, 1908.

And Supplement No. 25, Mississippi Valley Tariff No. 3, Supplement 29 to I. C. C. 10238, Effective Sept. 1st, 1908.

To	From														
	Cincinnati, O.					Louisville, Ky.					Nashville, Tenn.				
	C.	D.		F.		C.	D.		F.		C.	D.		F.	
	....	C. L.	L. C. L.	C. L.	L. C. L.	....	C. L.	L. C. L.	C. L.	L. C. L.	....	C. L.	L. C. L.	C. L.	L. C. L.
Hattiesburg, Miss. } Laurel, " }	41	32	37	69	82	39	30	35	65	77	34	25	30	55	67
Grain & grain products, viz: Bran & feed, corn-meal, hominy, grits.....			24					22					20		
Straight or mixed C. L., Min. 30,000 lbs.....		LCL	37												
Corn, barley, oats and rye, straight or mixed C. L. 30,000 lbs.....			24					22					20		
Flour, in sacks, bbls., half-bbls., straight or mixed C. L. 30,000 lbs.....	27½					25½					23½				
Same, L. C. L.....	41					39					34				

	C.	D.	F.	C.	D.	F.	C.	D.	F.
Jackson, Miss. / Meridian, Miss.	29	27	58	27	25	54	22	20	44
Corn, barley, oats & rye, straight — mixed, C. L		19½			17½			15½	
Bran, cornmeal, hominy, grits, hominy feed, grain-screenings & feed, straight or mixed C. L		19½			17½			15½	
Flour in sacks, bbls., half-bbls., oatmeal, rolled oats, etc., in straight or mixed C. L	23			21			19		
Same, L. C. L	29			27			22		
Wheat, C. L		22			20			18	
Grain & grain products, C. L. Min. 30,000 lbs. except where the marked capacity is less; in which case, the marked capacity will be the minimum.									

Differentials apply generally to Mississippi Valley and Western Tennessee Junction points.

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To	From Cincinnati, O.			From Louisville.			From Nashville, Tenn.		
	C.	D.	F.	C.	D.	F.	C.	D.	F.
Aberdeen, Miss. West Point, " Starkeville, " Columbus, "	32	28	64	27	25	54	21½	21	43
Grain & grain products, viz: Bran and feed, straight or mixed, C. L.....		25½			22½			18½	
Corn, barley, oats & rye, straight or mixed, C. L. Min. 30,000 lbs.....		26			23			19	
Flour, in bbls., C. L. Min. 30,000 lbs., per bbl.....			56			50			42
Flour, in sacks, C. L. Min. 30,000 lbs.....	28			25			21		
Wheat, C. L.....		28			25			21	

To	Cincinnati, O.						Louisville, Ky.						Nashville, Tenn.					
	C.		D.		F.		C.		D.		F.		C.		D.		F.	
	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.
Holly Springs, Miss.....	30½	33	25	28	61	66	25½	28	22	25	51	56	20	22½	17	20	40	45
Grain & grain products, bran & feed, straight or mixed C. L. Min. 30,000 lbs..			22						20						17			
Corn, barley, oats & rye, straight or mixed C. L. Min. 30,000 lbs.....			24						20						17			
Flour, in bbls., C. L. Min. 30,000, per bbl.....						52						44						38
Flour, in sacks, C. L. Min. 30,000 lbs.	26						22						19					
Wheat, C. L. Min. 30,000 lbs.....			26						22						19			

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To	Cincinnati, O.						Louisville, Ky.						Nashville, Tenn.					
	C.		D.		F.		C.		D.		F.		C.		D.		F.	
	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.
Winona, Miss.....	31	33	26	29	62	66	26	28	23	26	52	56	20½	22½	19	22	41	45
Grain & grain products, viz: Bran & feed, straight or mixed C. L. Min. 30,000 lbs.....			24						22						19			
Corn, barley, oats & rye, straight or mixed C. L. Min. 30,000.....			24						22						19			
Flour, in bbls., C. L. Min. 30,000 lbs., per bbl.....					54						48						42	
Flour, in sacks, C. L. Min. 30,000 lbs.....	27						24						21					

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EXHIBIT MOORE No. 2.

See Testimony, P. 14.

Official Classification No. 32, I. C. C. No. O. C. 32, Effective July 1, 1908.

Page 61, Item 34—Flour:
N. O. S.

	Class, L. C. L.	Class, C. L.
NOTE 1.—Flour, in packages weighing less than 10 lbs. each, will not be accepted for transportation.		
NOTE 2.—Half bbls., (not half bbl. sacks) estimated at 100 lbs. each. In bulk in bbls.:		
Quantities less than 200 bbs., estimated at 200 lbs., per bbl. (See note 2)	5	..
Quantities of 200 bbs. and over, estimated at 200 lbs., per bbl. (See note 2)	..	6
In cotton, jute or paper packages (See Note 1:—)		
Packed in boxes or bbls. (C. L. Min. weight 40,000 lbs.)	4	5
Loose:		
In quantities less than 40,000 lbs	5	..
In quantities of 40,000 lbs. and over	..	6

Page 78, Item 3—Grain and Grain Screenings:

NOTE 1.—On shipments subject to this Note, if marked capacity of car is less than 40,000 lbs., the minimum weight will be the marked capacity of the car, but in no case less than 30,000 lbs.

NOTE 2.—On shipments subject to this Note, if marked capacity of car is less than 35,000 lbs., the minimum weight will be the marked capacity of the car, but in no case less than 30,000 lbs.

Barley—Not sprouted:		
In sacks or bbls.	5	..
In bulk, less than 20,000 lbs. not taken.		
In bulk, 20,000 lbs., and over, and less than 40,000 lbs.	5	..
Min. weight 40,000 lbs., (subject to Note 1)	..	6
Item 6—Corn, N. O. S.:		
In sacks, or bbls.	5	..
In bulk, less than 20,000 lbs., not taken.		
In bulk, 20,000 lbs., and over, and less than 40,000 lbs.	5	..
Min. weight 40,000 lbs. (subject to Note 1)	..	6

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Item 7—Oats:

In sacks or bbls.	5	..
In bulk, less than 17,000 lbs. not taken.		
In bulk, 17,000 lbs., and over, and less than 35,000 lbs.	5	..
Min. weight 35,000 lbs. (subject to Note 2)	..	6

Page 78, Item 8—Rye, N. O. S.:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs. not taken.		
In bulk, 20,000 lbs., and over and less than 40,000 lbs.	5	..
Min. weight 40,000 lbs., (subject to Note 1)	..	6

Item 10—Wheat, N. O. S.:

In sacks, or bbls.	5	..
In bulk, less than 20,000 lbs. not taken.		
In bulk, 20,000 lbs., and over, and less than 40,000 lbs.	5	..
Min. weight 40,000 lbs. (subject to Note 1)	..	6

Page 81, Item 5:

Hay, pressed in bales, (C. L. min. weight 20,000 lbs.) (Subject to Rule 27)	1	5

841 EXHIBIT MOORE 3.

See Testimony, P. 15.

Western Classification No. 44, I. C. C. No. 2. Effective May 1st, 1908.

Page 27, Item 10—Cereals and Cereal Products:

Bran or Shorts:

	Class. L. C. L.	Class. C. L.
In bags	4	B
In bulk	..	

Item 44—Corn Meal, Brewers' Corn Meal, Grits and Hominy

In paper sacks	3	5
In cotton sacks	4	
In barrels or boxes	4	

Item 56—Feed, N. O. S., including Clover Meal, Gluten Meal, Ground Alfalfa, Corn Germ, and Corn Germ Feed:		
In bags	4	B
In Bulk	..	
Item 61—Flour, N. O. S., Including Flourine in jute sacks, Self-Rising or Pancake Flour, and Semita:		
In pails, covers well secured	4	5
In barrels, 200 lbs. per bbl. (exception to Rule 1)	4	
In cotton sacks, or in boxes, actual weight	4	
In paper sacks, actual weight	3	
Page 28, Item 10—Grain, N. O. S.:		
In bags, boxes, or barrels	4	B
Grain and Screenings:		
In bags	4	B
In Bulk	..	
Item 16—Kaffir Corn:		
In bags, boxes or barrels	4	B
In bulk	..	
Min. weight 24,000 lbs.	..	
Page 63. Item 3—Hay and Straw:		
Flax Straw	..	C Min. Wt. 20,000 lbs.
Hay and Cane Fodder and dried corn stalks (corn on):		
Baled, but not pressed	1½	
Baled and Pressed	3	

842 MOORE EXHIBIT No. 4.

See Testimony, P. 18.

Comparative Statement of Less Carload and Carload Ratings on a Few of the Leading Commodities as Listed in Southern Classification No. 35, I. C. C. No. 10, Effective May 1, 1908.

Page.	Item No.		Class.
		Agricultural Implements, viz.:	
10	46 to 53.	Less carload ranges from 1st to.....	3rd
11	1 to 90.	" " " " double 1st to...	5th
12	1 to 34.	" " " " Double 1st to...	4th
10	43.	Carload, N. O. S., Straight, Min. Wt. 20,000 lbs.	6th
	44.	Carload, N. O. S. (taking 6th class when in straight C. L.) mixed C. L., Min. Wt. 20,000 lbs.	6th
		Bags, viz.:	
13	78.	Burlap, L. C. L.	5th
"	79.	Same, C. L.	6th
"	81.	Gunny, C. L.	5th
	82.	Same, C. L.	6th
	83.	Paper, Packed or in Bundles, L. C. L.....	5th
	84.	Same, C. L.	6th
		Beans, viz.:	
15	13.	N. O. S., Dried in boxes, bbls. or sacks, L. C. L.	4th
	14.	Same, C. L.	5th
		Blinds, Doors, Frames & Sash, viz.:	
15	52.	Glazed, crated or in bdls. L. C. L.	3th
	53.	Unglazed, crated or in bdls. L. C. L.	4th
	54.	Glazed, or unglazed, C. L.	6th
		Box Material, Wooden, viz.:	
16	27.	N. O. S., L. C. L.	4th
	28.	Min. Wt. 30,000 lbs., C. L.	A—
		Broom Corn—Compressed, viz.:	
17	53.	L. C. L.	2nd
22	54.	Same, Min. Wt. 15,000 lbs., C. L.....	5th
		Canned Goods—in Boxes, viz.:	
18	33.	Fish, Fruit & Vegetables, L. C. L.	3th
	34.	Same straight or mixed, C. L.	5th
18	39.	N. O. S., L. C. L.	2nd
	40.	Same, C. L.	4th

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		Crackers, Cakes & Bread:	
22	41.	N. O. S., packed, L. C. L.	4th
		Same, Min. Wt. 15,000 lbs., C. L.	5th
		Earthenware (not chinaware)—Crockery, Jugware or Stoneware, viz.:	
23	66.	In Boxes, L. C. L.	2nd
"	67.	In Slated Boxes, crates, bbls., casks or hogsheads, L. C. L.	4th
	68.	Loose, L. C. L.	2nd
	69.	Packed or Loose, C. L.	6th
		Fertilizers:	
24	50 to 84, inclusive	Min. Wt. 30,— lbs., C. L.	6th
	85 to 105 inc.	Same, L. C. L. 20% higher than C. L. rate.	
		Food Preparations, Crated, N. O. S. viz.:	
26	16.	In sacks or boxes, L. C. L.	4th
	17.	In Kegs, Bbls. or Drums, L. C. L.	5th
	18.	Packed or in Sacks, C. L.	6th
		Furniture, C. L., viz.:	
27	34.	N. O. S. all kinds, finished or in the white, straight, Min. Wt. 12,000 lbs. C. L.	3rd
27	36 to 65	Same, ranges from 3 times 1st to	2nd
28	1 to 74		
29	1 to 14		
		Glass and Glassware, viz.:—Bottles, viz.:	
29	37.	Bottles, Common Packed, L. C. L.	3rd
"	38.	Same, C. L.	5th
"	39.	Same, in Bulk, Packed in Excelsior or straw, C. L.	5th
30	2.	Fruit Jars, N. O. S., packed, L. C. L.	3rd
		Same, Min. Wt. 20,000 lbs., C. L.	5th
30	34.	Window Glass,—Plain, Colored, Enameled or ground, L. C. L.	3rd
"	35.	Same, C. L.	5th
		Grain—In Bulk.	
30	68.	Corn, Min. Wt. 40,000 lbs.	D—
"	69.	Oats, Min. Wt. 32,000 lbs.	D—
"	70.	Rye, Min. Wt. 40,000 lbs.	D—
"	71.	Wheat, Min. Wt. 40,000 lbs.	D—
"	72.	N. O. S., Min. Wt. 40,000 lbs.	D—

		Handles, viz.:	
31	62.	N. O. S. Boxed, crated or in Bdls., L. C. L.	3rd
"	63.	Same, C. L.	6th
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		Hay, Fodder and Straw:	
31	72.	Pressed in Bales, L. C. L.	5th
	73.	**Same, Min. Wt., 20,000 lbs., C. L.**	D—
	74.	Same, in Mixed carloads with Grain, Mill-stuff, Bran, Shorts or Ship-stuff, Min. Wt. 20,000 lbs., C. L.	D—
		Household Goods and Old Furniture:	
32	47.	Agreed to be of value of $15.00 per 100 lbs., in case of loss or damage, and so expressed in Bill of Lading, L. C. L.	2nd
	48.	Same, Min. Wt. 20,000 lbs., C. L.	6th
		Iron and Steel Articles:	
33	35.	Axles, viz.: Carriage or Wagon, packed or unpacked, L. C. L.	5th
	36.	Same, C. L.	6th
	48.	Bolts, nuts, rivets and washers, packed in sacks or Bdls, L. C. L.	5th
	49.	Same, C. L. Spl. Iron rate.	
33	55.	Boxes and Skeins, Vehicle, loose or packed, L. C. L.	5th
	56.	Same, C. L.	6th
34	51.	Fencing, wooven wire in rolls, L. C. L.	5th
	52.	Same, C. L.	6th
	76.	Hinges and Bolts, packed, L. C. L.	3rd
	77.	Same, C. L.	6th
35	40.	Mattocks & Picks, without handles, L. C. L.	4th
	41.	Same, C. L.	6th
35	50.	Nails & Spikes in Kegs, L. C. L.	6th
	51.	**Same, C. L. Spl. Iron rate**	
35	61.	Pipe, Cast, L. C. L.	6th
	62.	Same, C. L. Spl. Iron rate	
		Leather, in Rolls or Boxes:	
39	20.	In rolls, or boxes., L. C. L.	2nd
	21.	Same, Min. wt. 24,000 lbs., C. L.	4th
		Machinery, Machines—C. L.:	
41	8.	N. O. S., all Kinds, including Boilers, Engines and parts thereof. Straight C. L. Min. Wt. 20,000 lbs., C. L.	6th
	8.	N. O. S., all kinds (taking 6th class when in straight C. L.) mixed C. L. Min. Wt. 20,000 lbs., C. L.	6th

41	11 to 82.	L. C. L. Same, ranges from Double 1st to	5th
42	1 to 42.	L. C. L. Same, ranges from 3 times 1st class to	5th
845			
		Beef, viz.:	
43	47.	Canned Beef in Boxes, L. C. L.	3rd
	48.	Same, C. L.	B—
43	55.	Pork, Canned in Boxes, L. C. L.	3rd
	56.	Same, C. L.	B—
43	61.	Sausages, viz: Smoked or Canned, L. C. L.	3rd
	62.	Same, C. L.	B—
		Nuts—Edible, viz.:	
45	37.	Almonds, Filberts, Pecans, English Walnuts, Brazil Nuts, in sacks, boxes, Barrels or casks, L. C. L.	3rd
45	38.	Same, straight or mixed, C. L.	5th
		Oil, viz.:	
45	66.	Cotton-seed, in Bbls., L. C. L.	4th
	67.	Same, C. L.	6th
		Paints, viz.:	
47	63.	Bulk, Liquid, in Kegs, Kits, Bbls., Casks or in tin kegs, with flat tops, enclosed in veneer or sheet metal Jackets, L. C. L.	4th
	64.	Straight or Mixed, C. L.	5th
		Paper, viz.:	
48	8.	Building, carpet lining, news-print, (not machine finished, super calendered, coated or enameled book paper) Pulp Board, Strawboard, Roofing, Toilet or — and paper wrappers (unprinted also wrapping (unprinted) in rolls or folded flat, L. C. L.	5th
"	3.	Same, straight or mixed, C. L.	A—
		Plaster, viz.:	
49	61.	Cement, L. C. L.	6th
	62.	Same, C. L.	A—
	63.	Wall, N. O. S., L. C. L.	6th
	64.	Same, C. L.	A—
		Preserves, Fruit Butter & Jellies:	
50	54.	In glass or earthenware, packed, L. C. L.	2nd
	55.	In cans packed or wood, L. C. L.	3rd
	56.	In glass, earthenware or cans, packed or in wood, C. L.	5th

		Rope, viz.:	
52	57.	Cotton, L. C. L.	4th
	58.	Same, C. L.	5th
		Salt, viz.:	
53	21.	In sacks or bbls., L. C. L.	6th
	22.	Same, C. L.	A—
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		Seed, viz.:	
54	2.	Clover, L. C. L.	3rd
	3.	Same, C. L.	6th
	6.	Cotton, L. C. L.	6th
	7.	Same, Min. Wt. 30,000 lbs., C. L.	D—
	10.	Garden, L. C. L.	2nd
	11.	Same, C. L.	4th
	19.	Millet, L. C. L.	3rd
	20.	Same, C. L.	6th
	26.	Timothy, L. C. L.	3rd
	27.	Same, C. L.	6th
		Shingles, viz.:	
54	55.	Wooden, L. C. L.	4th
	56.	Same, C. L.	6th
		Starch, N. O. S.:	
56	25.	In Bags, Boxes or Bbls., L. C. L.	3rd
	26.	Same, C. L.	6th
		Stoves and Ranges, viz.:	
56	59.	Stoves and Ranges, Cast Iron, Stove Holloware, L. C. L.	3rd
	60.	Same, Min. Wt. 20,000 lbs., C. L.	5th
58	41.	Tin Plate, in boxes, L. C. L.	2nd
	42.	Same, Min. Wt. 30,000 lbs., C. L.	6th
	50.	Tinware, N. O. S., packed, L. C. L.	2nd
	51.	Same, Min. Wt. 20,000 lbs., C. L.	4th
		Wagons and Carts—Farm and Lumber, viz.:	
62	29.	Taken apart, and thoroughly K. D., L. C. L.	4th
	30.	S. U. or K. D., Min. Wt. 20,000 lbs., C. L.	6th
		Wire, viz.:	
64	69.	Iron or Steel in bdls. or coils, or on reels, L. C. L.	6th
	70.	Same, C. L.	Spl. Iron rate

Class Rates in Cents per **100 *Pounds.***

From—	1	2	3	4	5	6	A	B	C	D	E	Per bbl. F	Special iron. C.L.	Special iron. L.C.L.
Ohio River Crossings, to Atlanta, Ga.	98	87	78	63	52	41	28	36	28	24	48	48	31	34

Rule 27, Supplement No. 7, to Southern Classification No. 35, I. C. C., Supplement No. 7 to I. C. C., Number 10.

Rule 27. Owners will be required to load and unload bulk freight in carloads, and all other carloads of freight on which a specific carload rating is accorded, except that the carriers reserve the right to unload at their convenience.

EXHIBIT MOORE No. 5.

See Testimony, P. 20.

Grain Arbitrary List No. 17.

Nashville, Chattanooga & St. Louis Railway.

From Cairo, Ill., and Group.

To Western & Atlantic R. R.	Flour in sacks (not paper). C. L.	Flour in sacks (not paper). L. C. L.	Grain. C. L.	Grain, L. C. L., and grain products, per bbl., taking class D, N. O. S., except bran, C. L., & mill stuff, hay, fodder & straw pressed in bales, wt. 20,000 lbs.	Flour in bbls. C. L.	Flour in bbls. L. C. L.
Chickamauga, Tenn.	26	26½	26	26	52	53½
Graysville, Ga.	26	27	26	26½	52	54½
Ringgold, "	26	28	26	27	52	56
Catoosa, "	26	28½	26	27½	52	57
Tunnel Hill, "	26	28½	26	27½	52	57
Rocky Face, "	26	28½	26	27½	52	57
Tilton, "	26	29½	26	29	52	59½
Resaca, "	26	30	26	29½	52	60—
Calhoun, "	26	30	26	29½	52	60—
McDaniels, "	26	30	26	29½	52	60—
Adairsville, "	26	30½	26	30	52	61—
Halls, "	26	30	26	29½	52	60½
Clifford, "	26	30	26	29½	52	60½
Cement, "	26	29½	26	29	52	59½
Kingston, "	26	29½	26	29	52	59½

Bets,	"	26	28½	26	27½	52	57
Cass,	"	26	28½	26	27½	52	57
Rogers, Bartow Co.	"	26	28½	26	27½	52	57
Emerson,	"	26	28½	26	27½	52	57
Bartow,	"	26	28½	26	27½	52	57
Allatoona,	"	26	29½	26	29	52	59½
Aeworth,	"	26	30	26	29½	52	60½
Kennesaw,	"	26	31	26	30	52	62
Elizabeth,	"	26	31	26	30	52	62
Smyrna,	"	26	30	26	29½	52	60½
Vinings,	"	26	29½	26	29	52	59½
Gilmore,	"	26	29½	26	29	52	59½
Bolton,	"	26	28½	26	27½	52	57—

849 EXHIBIT MOORE No. 5.

No supplement can be issued to this tariff.

I. C. C. No. A-10073.

(Cancels I. C. C. No. A-9919.)

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1838.

(Cancels R. C. Circular No. 1727 of May 7, 1908.)

Reshipping and Milling in Transit at Nashville, Tenn., of Grain or Milled Products of Grain drawn from or through Cincinnati, Ohio; Louisville, Ky.; Evansville, Ind.; Henderson and Owensboro, Ky., destined to Local Stations on L. & N. R. R. south of Nashville, Tenn.

1. On shipments of grain or milled products of grain drawn into Nashville, Tenn., via the L. & N. R. R., from or through Cincinnati, Ohio, Louisville, Ky., Evansville, Ind., Henderson or Owensboro, Ky., and reshipped as grain or milled products to local stations of L. & N. R. R. south of Nashville, Tenn., full tariff rates will be charged into Nashville, Tenn, and full tariffs rates from Nashville, to final destination will be assessed.

2. On presentation of claim at the end of each month, accompanied with paid freight bills for the Grain or milled products of Grain into Nashville, Tenn., together with evidence of reshipment, there will be refunded to the reshipper at Nashville, Tenn., the difference between the sum of the rates into and out of Nashville, Tenn., and the through rate in effect from Cincinnati, O., Louisville, Ky., Evansville, Ind., Henderson or Owensboro, Ky., as the case may be, to such local stations on the Grain or milled products of Grain at the date of reshipment from Nashville, Tenn., subject to conditions provided in these rules. (See Section 7.)

3. The articles reshipped shall be the same as covered by the original expense bill, i. e., one kind of grain must not be reshipped on an expense bill covering another kind of Grain, except that expense bills for Barley or Oat Screenings will be accepted on reshipment of Oats; Grain must not be reshipped on an expense bill covering milled products of Grain, and one kind of Grain product must not be reshipped on an expense bill covering another kind of Grain product, or on an expense bill covering a kind of Grain other than that from which the product reshipped is manufactured.

4. Expense bills will not be honored for reshipment after six months from the date thereof.

5. The weight reshipped shall not exceed the weight of the original expense bill.

6. For every one hundred pounds of Wheat shipped into Nashville, Tenn., 72½ pounds of Flour and 26 pounds of Bran may be shipped out, but no more.

850 7. There shall be no trading of any expense bills (covering movement into Nashville, Tenn.) between receivers and shippers or millers in Nashville, for the commodities covered by these rules, except where there has been an actual transfer by sale to cover the commodity and the amount represented by the expense bill so transferred. Said transfers for expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by authorized inspector. In no case will there be permitted the transfer of expense bills when the sale is of grain or milled products of Grain arriving at Nashville, Tenn., by river or by wagon.

Issued June 3, 1908. Effective July 6, 1908.

Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

File 93344.

" 314000, sub-pad 6—(Screenings).

851 EXHIBIT MOORE No. 5.

No supplement can be issued to this tariff.

I. C. C. No. A-10100.

(Cancels I. C. C. No. A-10072.)

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1852.

(Cancels R. C. Circular No. 1837 of July 6, 1908.)

Reshipping and Milling in Transit at Nashville, Tenn., of Grain, Hay, or Milled Products of Grain Drawn from or Through Louisville, Ky., Evansville, Ind., Memphis, Tenn., or from Henderson, Ky. (proper), and Owensboro, Ky. (proper), to Carolina Territory.

1. On shipments of Grain, Hay, or milled products of Grain drawn into Nashville, Tenn., via L. & N. R. R., from Louisville, Ky., Henderson, Ky., Owensboro, Ky., Memphis, Tenn., or from points beyond via these points, and reshipped as Grain, Hay, or milled products of Grain, via the Nashville, Chattanooga & St. Louis Ry., to points located in Carolina Territory, this Company will join the N. C. & St. L. Ry., in protecting for the haul south of Louis-

ville, Ky., Henderson, Ky., Owensboro, Ky., or Memphis, Tenn., as the case may be, the same rate as would govern via Nashville and Chattanooga from Louisville (proper), Henderson (Proper), Owensboro (proper), or Memphis (proper), on that particular kind of milled product of Grain, Grain or Hay to final destination at date of reshipment from Nashville.

2. On shipments of Grain, Hay or Milled products of Grain brought into Nashville from Evansville, Ind., or through Evansville, Ind., from points in Illinois and Indiana from which there is an established basis for through rates in effect via Evansville, and reshipped as Grain, Hay, or milled products of Grain to points in Carolina Territory to which through rates from Evansville, Ind., are published in current Carolina Tariff No. 1 (L. & N. R. R., G. F. O. No. 1057), I. C. C. No. 5, issued by M. P. Washburn, Agent, Louisville, Ky., supplements thereto or reissues thereof, and applicable via Nashville and Chattanooga, this Company will join the Nashville, Chattanooga & St. Louis Ry. in protecting for the haul south of Evansville, Ind., the same rates on the Grain, Hay or milled products of Grain as the case may be, as would have applied from Evansville, Ind., on through shipments to final destination at date of reshipment from Nashville, Tenn.

3. On presentation to the Inspector of the S. E. M. V. Association of an original Nashville or West Nashville expense bill showing point of origin of the shipment, the Inspector will indicate on the expense bill the character of the rate south of the Ohio River to which the shipment when reshipped is entitled. The expense bill shall be numbered and the date of expiration shown.

4. On presentation by reshipper or miller of such certified expense bill (and under no other circumstances), bill of lading, showing Inspector's number, may be issued for the reshipment by the Nashville or West Nashville lines (see Section 11).

852 5. When bills of lading are issued as above, the Agent issuing same shall endorse on the expense bill the bill of lading date, commodity weight, point of destination, and rate allowed.

6. Expense bills will not be honored for reshipment after six months from date thereof.

7. The weight reshipped shall not exceed the weight of the original expense bill.

8. Way-bills shall show original point of shipment and Inspector's number.

9. The articles reshipped shall be the same as covered by the original expense bill; i. e., one kind of Grain must not be reshipped on an expense bill covering another kind of Grain, except that expense bill for Barley or Oat Screenings will be accepted on the reshipment of Oats. Grain must not be reshipped on an expense bill covering hay or milled products, and one kind of milled product must not be reshipped on an expense bill covering another kind of milled product, or on an expense bill covering a kind of grain other than that from which the product reshipped is manufactured.

10. For every one hundred pounds of Wheat shipped into Nash-

ville, seventy-two and one-half (72½) pounds of Flour and Twenty-six (26) pounds of Bran may be shipped out, but no more.

11. There shall be no trading of any expense bills (covering movement into Nashville, Tenn.), between receivers and shippers or millers, in Nashville, for the commodities covered by these rules, except where there has been an actual transfer by sale to cover the commodity and the amount represented by the expense bill so transferred. Said transfer of expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by authorized inspector. In no case will there be permitted the transfer of expense bills when the sale is of Grain, Hay or milled products of Grain arriving at Nashville, Tenn., by river or by wagon.

12. These rules do not authorize reshipping and milling in transit at Nashville, Tenn., of grain or its products drawn from Mt. Vernon, Ind. (File 96514).

13. For definition of Carolina Territory see Circular No. N. S. 2577 (I. C. C. No. A-9642), of December 16, 1907, or subsequent issues thereof.

Issued June 17, 1908. Effective August 6, 1908.

Issued by D. M. Goodwyn, General Freight Agent Louisville, Ky.

Files 93444, 194025(Owensboro, Ky.), 218396, 350023(Reissue).
" 314000, Sub-pad 6 (Screenings).

853 EXHIBIT MOORE No. 5.

No supplement can be issued to this tariff.

I. C. C. No. A-10115.

(Cancels I. C. C. No. A-9917.)

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1857.

(Cancels R. C. Circular No. 1716 of May 1, 1908.)

Milling in Transit at Nashville, Tenn., of Grain Drawn From or Through Evansville, Ind., and Henderson, Ky., the Product Reshipped to Mississippi Valley Territory.

1. On shipments of Grain brought into Nashville, Tenn., via the L. & N. R. R., from or through Evansville, Ind., or Henderson, Ky., and reshipped as milled products of Grain, full tariff rates will be charged on the Grain into Nashville, Tenn., and full tariff rates will be assessed on the milled product from Nashville, Tenn., to final destination.

2. Upon presentation of claim at the end of each month, accompanied with paid freight bills for the Grain into Nashville, Tenn.,

together with evidence of reshipment of the milled products of Grain to Mississippi Valley points as enumerated in L. & N. R. R. tariffs herein named, the L. & N. R. R. will refund to the Nashville reshipper the difference between the sum of the rates charged for the two hauls into and out of Nashville, Tenn., and the through rate in effect from Evansville, Ind., or Henderson, Ky. as the case may be, as shown in L. & N. Tariffs G. F. O. No. 1053 (I. C. C. No. A-10103) and G. F. O. No. 975 (I. C. C. No. A-9162), and Mississippi Valley Tariff No. 1 (I. C. C. No. A-6) issued by Mr. A. D. Hall, Agent, St. Louis, Mo., supplements thereto or reissues thereof, on the milled product of the grain at date of reshipment from Nashville, Tenn., subject to the conditions provided in these rules. (See section 3.)

(*a*) Expense bills will not be honored for reshipment after six months from the date thereof.

(*b*) The weight of the Corn product shipped must no- exceed the weight of Corn brought into Nashville, Tenn.

(*c*) For every one hundred pounds of Grain shipped into Nashville, Tenn., seventy-two and one-half (72½) pounds of Flour, and twenty-six (26) pounds of Bran may be shipped out of Nashville, Tenn., but no more.

3. There shall be no trading of any expense bills (covering movement of Grain at Nashville, Tenn., between receivers and shippers or millers in Nashville, except where there has been an actual transfer of Grain by sale to cover the amount represented by the expense bill so transferred. Said transfer of expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by authorized inspector. In no case will there be permitted the transfer of expense bills when the sale is of Grain arriving at Nashville, Tenn., by river or by wagon.

4. These rules do not authorize milling in transit of Grain drawn from Mt. Vernon, Ind.

854 Issued June 24, 1908. Effective July 28, 1908.

Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

File 268650—Reissue.

File 369000-340806—Original.

855 EXHIBIT MOORE No. 5.

I. C. C. No. 3657.

Cancels I. C. C. No. 3640.

Illinois Central Railroad Company

(Southern Lines)

In Connection with Southern Railway and Transportation Companies Shown on Page 2 of Cover.

B-12412.

(Cancels A-12412-).

Joint Freight Tariff.

Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw, at Nashville, Tenn., When for Points in Southeastern and Carolina Territories.

Issued November 22, 1906. Effective December 24, 1906.
Issued by Charles C. Cameron, General Freight Agent, Memphis.
John Dwyer, Ass't Gen'l Freight Agent, Memphis.
Wm. Smith, Jr., Ass't Gen'l Frt. Agent.
Jos. Hattendorf, Ass't Gen'l Frt. Agent, Memphis.
T. J. Judson, Gen'l Trf. Mgr., Chicago.
F. B. Bowes, Frt. Trf. Manager, Chicago.
D. W. Longstreet, General Frt. Agent, Louisville.

856 This tariff will apply in connection with following transportation Companies:

Alabama Great Southern R. R.
Albany & Northern Ry.
Atlanta & West Point R. R.
Atlanta, Birmingham Air Line Ry.
Atlantic Coast Line R. R.
Augusta Southern R. R.
Birmingham & Atlantic R. R.
Carrabelle, Tallahassee & Georgia R. R.
Central of Georgia Ry.
Charleston & Western Carolina Ry.
Chattahoochee Valley R. R.
Chattanooga Southern R. R.
Darien & Western R. R.
Douglas, Augusta & Gulf R. R.
Knoxville & Bristol Ry.
Lexington Terminal R. R. Co.
Linville River Ry.
Little River R. R.
Live Oak & Gulf R. R.
Live Oak, Perry & Gulf R. R.
Louisville & Wadley R. R.
Macon & Birmingham Ry.
Macon, Dublin & Savannah R. R.
Millen & Southwestern R. R.
Milltown Air Line Ry.
Monroe R. R.
Nashville & Sparks R. R.
Northern Alabama Ry.
Ocilla & Valdosta R. R.
Register & Glenville Ry.

Dublin & Southwestern R. R.
East Tennessee & Western North Carolina R. R.
Flint River & Northeastern R. R.
Florida East Coast Ry.
Florida & Georgia Ry.
Florida Ry. Co.
Florida West Shore Ry.
Gainesville & Gulf Ry.
Gainesville Midland Ry.
Garbutt & Donovan Short Line Ry.
Georgia R. R.
Georgia, Florida & Alabama Ry.
Georgia Northern Ry. Co. of Georgia.
Georgia Southern & Florida Ry.
Hampton & Branchville R. R.
Hawkinsville & Florida Southern Ry.
Knight & Martin Tram. R. R.
Knoxville & Augusta R. R.
Reidsville & Southeastern R. R.
Savannah & Statesboro Ry.
Seaboard Air Line Ry.
South & Western Ry.
Southern Ry.
South Georgia & West Coast Ry.
Sylvania Central Ry.
Talbotton R. R.
Tallassee & Montgomery Ry.
Tellico Ry.
Tennessee & North Carolina R. R.
Tuskegee R. R.
Union Point & White Plains R. R.
Valdosta Southern R. R.
Virginia & Southwestern Ry.
Wadley Southern Ry.
Western & Atlantic R. R.
Western Ry. of Alabama.
Wrightsville & Tennille R. R.
Yellow River R. R.

857 *Milling in Transit at Nashville, Tenn.*

The following rates and rules will apply on Grain milled in transit at Nashville:

1. Grain from—
Louisville, Ky.
Owensboro, Ky.
Evansville, Ind.
Henderson, Ky.
Uniontown, Ky.
Brookport, Ill.
Paducah, Ky.
Cairo, Ill.
East Cairo, Ky.
Memphis, Tenn.

And all local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Nashville to Henderson, Ky. inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky., to Jackson, Tenn., inclusive, Troy and Dyersburg Branches.

2. Grain originating on connecting lines at points north of the Ohio River, when delivered to the Illinois Central Railroad (Southern Lines), at Ohio River Crossings, or grain delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed herein, will be treated the same as grain originating at those points proper, it being understood that the protection of the through rates on the milled product is in no case to be extended to points north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the grain.

3. The milled product may be forwarded to points in Southeastern and Carolina territories (as hereinafter described) on or reached by the Southern Railway and its connections.

4. Milling in transit under the following rules shall be confined to routes over which through rates and divisions are in effect via Nashville, from the point at which the transit of the grain commences within the territory described by this Tariff to the destination of the milled product.

5. The through rates in effect (at date of forwarding of the milled product) from the point at which the transit of the grain commences within the territory prescribed by this tariff, to the final destination of the milled product, shall be protected as follows:

On Flour in barrels, the through rate on Flour in barrels shall be protected.

On Flour in sacks, the through rate of Flour in sacks shall be protected.

On Meal, grits and hominy, the through rates on these commodities, respectively, shall be protected.

On Mill Feed and Offal, the through rates on these commodities, respectively, shall be protected.

858 6. For every 270 pounds of Wheat received at Nashville, the following percentage of product may be forwarded:

Flour, 196 lbs., equivalent to	72.5%
Bran, 70 lbs., " "	26.0%
(Waste), 4 lbs., " "	1.5%
Total, 270 lbs., equivalent to	100.0%

For every 56 pounds of Corn received at Nashville, 56 pounds of meal, grits or hominy may be forwarded; or for every 56 pounds of corn received at the mill 47 pounds of meal, grits or hominy, and 9 pounds of meal bran may be forwarded.

The foregoing is equal to the following ratio, which may be used as a matter of convenience:

Meal, grits or hominy	83.93%
Meal Bran	16.07%
Total	100 %

7. Grain to be milled in transit must be waybilled to Nashville at the full tariff rates.

8. Bills of lading for the milled product shall be issued at the published tariff rates in effect from Nashville at date of forwarding.

9. The milled product shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates (in effect at date of forwarding) on the milled product from the point at which the transit of the grain commences, within the territory prescribed by this Tariff, to the final destination of the product.

10. The difference between such proportions and the bill of lad-

ing rates, will be refunded to shippers by the Southern Railway and carried on waybills as advanced charges. (The sum of said advanced charges and the proportions used in waybilling shipments from Nashville is the Nashville proper rate.)

11. The difference, if any, between the rate on the grain from the point at which the transit of the grain commences, within the territory prescribed by this tariff, to Nashville, and the proportion west of Nashville of the through rate on the milled product to its final destination to be refunded through the Freight Claim Department. No "charges" or proportions accruing to lines north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the grain, will be refunded.

12. If the rate paid on the grain from the point at which the transit of the grain commences within the territory prescribed by this Tariff to Nashville is less than the proportion to Nashville of the through rate on the milled product to its final destination, the line east of Nashville shall so report, and pay through the Freight Claim Department to the line west of Nashville the amount due.

(*a*) The line from Nashville to final destination of the product will charge its proportion of the through rate on said product from the point at which the transit of the grain commences within the territory prescribed by this Tariff to such final destination.

859 (*b*) If the combination based on charges to Nashville on the grain, plus the proportion of the milled product rate from Nashville to final destination, makes a less total from the point at which the transit of the grain commences within the territory prescribed by this Tariff to such final destination than the through rate in effect on the milled product at date of forwarding from Nashville, then the charges from Nashville to destination shall be advanced sufficiently to maintain such established through rate. Any excess so charged shall be promptly reported and paid over to the line handling the grain into Nashville.

13. Waybills for the milled product from Nashville shall show the point at which the transit of the grain commences within the territory prescribed by this Tariff and the through rates and divisions on the product from such point to final destination.

14. The original freight bills, or certified copies, covering the movement of the grain into Nashville, shall be surrendered to the agent of the Southern Railway at Nashville, and the milling in transit arrangement shall apply only after such freight bills have been surrendered.

15. Said freight bills shall be taken up and cancelled, so as to prevent their subsequent use.

16. The agent of the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

17. Freight bills for wheat dated July 1st of one year to June 30th of the succeeding year, that remain unused on July 1st, may be honored for six months from July 1st, provided said bills are not more than twelve months old.

Freight bills for corn, dated November 1st of one year to October 31st of the succeeding year, that remain unused on November 1st, may be honored for six months from November 1st, provided said bills are not more than twelve months old.

18. Exchange of freight bills will be permitted from dealers and brokers to millers, for use in milling in transit; in each case the party transferring the bill must endorse and sign as follows: "The property represented by this freight bill has been sold and delivered to ——."

Exchange of freight bills between dealers will not be permitted and under no circumstances will such freight bills be accepted.

860 *Reshipping at Nashville, Tenn.*

The following rates and rules will apply on Grain, Grain Products, Hay and Straw, reshipped at Nashville:

1. Grain, Grain Products, Hay and Straw from—

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And Grain and Grain Products from local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Nashville to Henderson, Ky., inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky. to Jackson, Tenn.; inclusive; Troy and Dyersburg Branches. (Reshipping of Hay and Straw, when from Illinois Central Railroad local or junction points south of the Ohio River, will not be permitted.)

2. Shipments of the commodities specified originating on connecting lines at points north of the Ohio River when delivered to the Illinois Central Railroad (Southern Lines) at Ohio River crossings of such shipments (irrespective of point of origin) delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed by this Tariff, will be treated as if originating at those points proper; it being understood that the protection of the through rates as hereinafter provided will in no case be extended to points north of the Ohio River, west of the Mississippi River or beyond the junction at which the Illinois Central Railroad receives the property.

3. The reshipping authorized by this Tariff shall be confined to points of destination located in Southeastern and Carolina territories (as hereinafter described) on or reached by the Southern Railway and its connections, provided through rates and divisions are published by the Illinois Central Railroad in connection with the Southern Railway and its connections from the points of origin

specified, to the points of destination in said territories; and provided further, that through rates from Nashville to the same points of destination are published by the Southern Railway.

4. On such commodities reshipped, the through rates or authorized proportional rates, if any, in effect at date of reshipment will be protected from the points of origin specified to final destination, subject to the following rules:

5. Reshipping under this Tariff shall be confined to routes over which through rates and divisions are in effect via Nashville, from the point at which the transit of the property commences within the territory prescribed by this Tariff to final destination.

6. The through rates in effect at date of reshipment shall be protected from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination.

7. Shipments shall be billed at full tariff rate to Nashville.

8. The weight reshipped shall not exceed the weight shown on the Freight bills and bills of lading covering the shipments into Nashville.

861 9. The commodities reshipped must be of the same character as received at Nashville; in other words, hay shall not be reshipped on grain freight bills, nor vice versa, nor shall one class of grain be reshipped on freight bills covering another class of grain, nor shall milled products be reshipped on freight bills covering grain or hay, nor vice versa, nor one kind of milled product reshipped on freight bills covering another kind.

10. Bills of lading for the commodities reshipped shall be issued by the Southern Railway at Nashville, at the rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff, to final destination.

11. Shipments shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination, except in case the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville, plus the proportion of the through rate from Nashville to final destination, make a less total to such final destination than the through rate from such point in effect at date of reshipment, then the charges from Nashville to destination shall be advanced sufficiently to maintain such established through rate. Any excess so charged shall be promptly reported and paid over to the line handling the property into Nashville

12 The proportion accruing to the line west of Nashville out of the through rate from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination, to be shown on the waybill from Nashville as "advanced charges," such amount to be refunded direct to the shipper by the Southern Railway at Nashville at time of reshipment.

13. The difference, if any, between the rate paid from the point at which the transit of the property commences within the territory

prescribed by this Tariff to Nashville, and the proportion west of Nashville of the through rate from such point to final destination referred to in the preceding paragraph as "advanced charges" will be refunded through the Freight Claim Department.

14. In no case shall there be refunded at Nashville an amount in excess of the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville. In case the proportion of the through rate from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville is greater than the rate charged to Nashville, the excess shall be deducted from the proportion (west of Nashville) of the through rate from such point to final destination, and added to the proportion *each* of Nashville, so that in no case will the amount of "advanced charges" way-billed from Nashville be greater than the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville. The excess shall be shown on the way-bills from Nashville as undercharges and as separate items in the freight column of such way-bills, and will be refunded to the line west of Nashville through the Freight Claim Department.

862 15. Waybills from Nashville shall show the point at which the transit of the property commences within the territory prescribed by this Tariff, and the through rates and divisions from such point to final destination.

16. The original paid freight bills covering the movement into Nashville, or certified copies, shall be surrendered to the Agent of the Southern Railway at Nashville, and reshipment shall not be permitted as provided herein until such freight bills have been surrendered.

17. Said freight bills shall be taken up and cancelled by the Agent of the Southern Railway at Nashville to prevent their subsequent use.

18. Freight bills will not be honored for reshipment when more than ninety days old.

863 *Shelling in Transit at Nashville, Tenn.*

The following rates and rules will apply on Corn on the ear and Corn in the shuck, shelled in transit at Nashville:

1. Corn from—

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky. to East Cairo, Ky., inclusive; Nashville Division, Nashville to Henderson, Ky. inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky., to Jackson, Tenn., inclusive; Troy and Dyersburg Branches.

2. Corn originating on connecting lines at points north of the Ohio River, when delivered to the Illinois Central Railroad (Southern Lines), at Ohio River Crossings, or corn delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed herein, will be treated the same as corn originating at those points proper, it being understood that the protection of the through rates is in no case to be extended to points north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the corn.

3. The product may be forwarded to points in Southeastern and Carolina territories (as hereinafter described) on or reached by the Southern Railway and its connections.

4. Shelling in transit under the following rules shall be confined to routes over which through rates and divisions are in effect via Nashville, from the point at which the transit of the corn commences within the territory prescribed by this tariff to the destination of the product.

5. The through rates in effect (at date of forwarding of the product) from the point at which the transit of the corn commences within the territory prescribed by this Tariff, to the final destination of the product, shall be protected.

6. For every 70 pounds of Corn on the ear received at Nashville, the following may be forwarded:

Shelled Corn, 70 lbs., or Shelled Corn, 56 lbs., equivalent to..	80%
Cobs or Cob Meal, 14 lbs., " " ..	20%
Total, 70 lbs.....	100%

864 For every 75 lbs. of Corn in the shuck received at Nashville, the following may be forwarded:

Shelled Corn, 75 lbs., or Shelled Corn, 56 lbs., equivalent to.	74.7%
Cobs or Cob Meal, 14 lbs., " " .	18.7%
Shucks, 5 lbs., " " .	6.6%
Total, 75 lbs.....	100 %

7. Corn to be shelled in transit must be way-billed to Nashville at the full tariff rates.

8. Bills of lading for the product shall be issued at the published tariff rates in effect from Nashville at date of forwarding.

9. The product shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates (in effect at date of forwarding) on the product from the point at which the transit of the corn commences, within the territory prescribed by this tariff, to the final destination of the product.

10. The difference between such proportions and the bill of lading rates, will be refunded to shippers by the Southern Railway and carried on waybills as advanced charges. (The sum of said advance

charges and the proportions used in waybilling shipments from Nashville is the Nashville proper rate.)

11. The difference, if any, between the rate on the corn from the point at which the transit of the corn commences, within the territory prescribed by this tariff, to Nashville, and the proportion west of Nashville of the through rate on the product to its final destination to be refunded through the Freight Claim Department. No "charges" or proportions accruing to lines north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the corn, will be refunded.

12. If the rate paid on the corn from the point at which the transit of the corn commences within the territory prescribed by this Tariff to Nashville is less than the proportion to Nashville of the through rate on the product to its final destination, the line east of Nashville shall so report, and pay through the Freight Claim Department to the line west of Nashville the amount due.

(*a*) The line from Nashville to final destination of the product will charge its proportion of the through rates (on said product) from the point at which the transit of the corn commences within the territory prescribed by this tariff to such final destination.

(*b*) If the combination based on charges to Nashville on the Corn, plus the proportion of the product rate from Nashville to final destination, makes a less total from the point at which the transit of the corn commences within the territory prescribed by this Tariff to such final destination than the through rate in effect on the product at date of forwarding from Nashville, then the charge from Nashville to destination shall be advanced sufficiently to maintain such established through rate. Any excess so charged shall be promptly reported and paid over to the line handling the corn into Nashville.

865 13. Waybills for the product from Nashville shall show the point at which the transit of the corn commences within the territory prescribed by this Tariff and the through rates and divisions on the product from such point to final destination.

14. The original freight bills, or certified copies, covering the movement of the corn into Nashville, shall be surrendered to the agent of the Southern Railway at Nashville, and the shelling in transit arrangement shall apply only after such freight bills have been surrendered.

15. Said freight bills shall be taken up and cancelled, so as to prevent their subsequent use.

16. The agent of the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

17. Freight bills for corn, dated November 1st of one year to October 31st of the succeeding year, may remain unused on November 1st, may be honored for six months from November 1st, provided said bills are not more than twelve months old.

866 *Description of Territories of Destination as Referred to Herein.*

Southeastern Territory.

Points east of the Mobile & Ohio R. R., from Mobile to Corinth, Miss. (not including Aberdeen, Columbus or West Point, Miss.), and on and south of the Memphis Division of the Southern Railway from Corinth (but not including Corinth), to and including Chattanooga, thence via Southern Railway to but not including Cleveland, Tenn., and thence south and west of the southern boundary line of the Carolina Territory as described below.

Carolina Territory.

Points on and north and east of a line drawn from Wilmington, N. C., via the Atlantic Coast Line through Florence, S. C., to Columbia, S. C., thence via the Southern Railway through Alston, Newberry, Greenwood, Abbeville, Belton, Anderson and Seneca to Walhalla, S. C., thence via an imaginary direct line from Walhalla through Murphy, N. C., to Cleveland, Tenn., thence via a line drawn just south of the Southern Railway from Cleveland to Chattanooga (not including Chattanooga) and points on and south of the Southern Railway from Chattanooga, Tenn., through Cleveland, Athens and Knoxville to Bristol (including Bristol), also Knoxville and Ohio Division of the Southern Railway between Jellico and Knoxville (not including Jellico) also points south of the main line of the Norfolk & Western Ry., from Bristol, Tenn., to Norfolk, Va., thence on and west of the Atlantic Seaboard to Wilmington, N. C., the point of beginning.

867 *Supplement No. 1 to I. C. C. No. 3657.*

Illinois Central Railroad Company.

(Southern Lines.)

In Connection with Southern Railway and Transportation Companies Shown in Tariff.

Supplement No. 1 to Joint Freight Tariff B-12412.

Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw at Nashville, Tenn., When for Points in Southeastern and Carolina Territories.

Correction—Reshipping Rules.

Refer to Page 4 of Tariff, and correct Rule 18 to read as follows:
18. Freight bills will not be honored for reshipment when more than six (6) months old.

Issued November 28, 1906. Effective January 1, 1907.
Issued by Charles C. Cameron, General Freight Agent Memphis.
John Dwyer, Ass. Gen'l Frt. Agt., Memphis.
Wm. Smith, Jr., Ass't Gen'l Frt. Agt., Nashville.
Jos. Hattendorf, Ass't Gen'l Frt. Agt., Memphis.
T. J. Hudson, Gen'l Trf. Mgr., Chicago.
F. B. Bowes, Frt. Trf. Mgr., Chicago.
D. W. Longstreet, Gen'l Frt. Agent, Louisville.
(Mailing List 3444.) (File 99521.) Authority A-3754.

868 *Supplement No. 2 to I. C. C. No. 3657.*

Illinois Central Railroad Company.

(Southern Lines.)

In Connection with Southern Railway and Transportation Companies Shown in Tariff.

Supplement No. 2 (Cancels Supplement No. 1 and Includes All Changes) to Joint Freight Tariff B-12412.

Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw at Nashville, Tenn. When for Points in Southeastern and Carolina Territories.

Issued January 19, 1907. Effective February 21, 1907.
Issued by Charles C. Cameron, General Freight Agent, Memphis.
T. J. Hudson, General Traffic Manager, Chicago.
F. B. Bowes, Freight Traffic Manager, Chicago.

869 *Correction—Milling in Transit Rules.*

Refer to page 1 of Tariff, and correct Rule 1 to read as follows:
The following rates and rules will apply on Grain milled in transit at Nashville:

1. Grain from:

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

and local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Divison, Hopkinsville to Henderson, Ky., inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky., to Jackson, Tenn., inclusive; Troy and Dyersburg Branches.

Correction—Reshipping Rules.

Refer to page 3 *to* Tariff, and correct Rule 1 to read as follows:
The following rates and rules will apply on Grain, Grain Products, Hay and Straw, reshipped at Nashville:

1. Grain, Grain Products, Hay and Straw from:

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And grain and grain products from local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Hopkinsville to Henderson, Ky., inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky., to Jackson, Tenn., inclusive; Troy and Dyersburg Branches. (Reshipping of Hay and Straw, when from Illinois Central Railroad local and junction points south of the Ohio River, will not be permitted.)

Refer to page 4 of Tariff, and correct Rule 18 to read as follows:
18. Freight bills will not be honored for shipment when more than six months old.

870 *Correction—Shelling in Transit Rules.*

Refer to page 5 of Tariff, and Correct Rule 1 to read as follows:
The following rates and rules will apply on Corn on the ear and Corn in the shuck, shelled in transit at Nashville:

1. Corn from:

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Hopkinsville to Henderson, Ky., inclusive; Uniontown and Dixon Branches; Tennessee Division, Paducah to Memphis, inclusive; East Cairo, Ky., to Jackson, Tenn., inclusive; Troy and Dyersburg Branches.

(Mailing List 3444.) (Files 99521, 231.) (Authority A-3754.)

871 Illinois Central Railroad Company, The Yazoo & Mississippi Valley R. R. Co., in Connection with Transportation Companies Shown in Tariffs Amended.

Rate Circular No. 118 Applying on Grain Milled in Transit at Ohio River Crossings, Memphis, Nashville, Rives, Obion and Dyersburg, Tenn., Corydon, Ky., and Other Points Shown in Tariffs Amended When the Milled Product is Shipped to Points in Southeastern, Carolina and Mississippi Valley Territories, and Other points Shown in Tariffs Amended.

Time limit on expense bills used in milling in transit of Grain applicable in connection with tariffs enumerated on reverse side is corrected as follows:

"Expense Bills shall not be honored for Milling in Transit purposes when more than six months old."

Issued March 20, 1907. Effective April 25, 1907.

Issued by David W. Longstreet, General Freight Agent, Memphis.

T. J. Hudson, Gen'l Trf. Mgr., Chicago.
F. B. Bowes, Frt. Trf. Mgr., Chicago.
C. C. Cameron, Gen'l Frt. Agt., Chicago.
W. E. Keepers, Gen'l Frt. Agt., Chicago.

872 The following Tariffs are amended.

Tariff No.	I. C. C. No.	Application—Milling in Transit at
Supplement No. 1 to F-1158	Supplement 1 to I. C. C. No. 3630	Illinois Central R. R. (Southern Lines) Stations.
Supplement No. 1 to B-3589	Supplement No. 1 to I. C. C. 1528	Nashville, Tenn, product to be shipped to New Orleans, La.
Supplement No. 8 to F-3772	Supplement 8 to I. C. C. No. 3351	Rives, Obion and Dyersburg, Tenn.
Supplement No. 5 to C-3931	Supplement 5 to I. C. C. No. 3255	Memphis, Tenn.
Supplement No. 23 to A-3948	Supplement 23 to I. C. C. No. 1545	Southeastern points.
Supplement No. 19 to A-3949	Supplement 19 to I. C. C. No. 1546	Southeastern points.
Supplement No. 7 to B-8031	Supplement No. 7 to I. C. C. 3355	Rives, Obion and Dyersburg, Tenn.
Supplement No. 4 to B-8036	Supplement 4 to I. C. C. No. 1716	Henderson, Ky., when from Corydon, Ky.
Supplement No. 1 to B-8250	Supplement 1 to I. C. C. No. 2856	Omaha, Ga.
Supplement No. 6 to C-8274	Supplement 6 to I. C. C. No. 2609	Henderson, Ky., when from Ohio River Landings.
Supplement No. 1 to D-12117	Supplement No. 1 to I. C. C. 3493	Corydon, Ky.
Supplement No. 2 to A-12236	Supplement 2 to I. C. C. No. 3237	Cairo, Ill., when from Wickliffe, Ky.
Supplement No. 4 to A-12253	Supplement 4 to I. C. C. No. 3270	Illinois Central R. R. (Southern Lines) Stations.
Supplement No. 1 to A-12330	Supplement 1 to I. C. C. No. 3241	Dyersburg, Tenn., product to be shipped to Pensacola, Fla.
Supplement No. 3 to B-12412	Supplement 3 to I. C. C. No. 3657	Nashville, Tenn.

(Mailing Lists No. 4227.) (S. E. M. V. R.—A No. 12547.) (Authority A-2450.)

873 Illinois Central Railroad Company

(Southern Lines).

The Yazoo & Mississippi Valley R. R. Co.

In Connection with Transportation Companies Shown in Tariff Amended.

Rate Circular No. 8-A,

Covering Rules and Regulations Governing Reconsignment, Diversion, Change of Consignee or Destination of Shipment En Route.

Addition.

Each of the Tariffs Enumerated on Reverse side is Amended as Follows:

The Rules of this Tariff will not apply on commodities covered thereby when reshipped in original cars upon which reconsignment, diversion, change of consignee or destination is desired before the cars are unloaded. Such shipments will be subject to the rules and charges provided in Tariff No. 1495-A, I. C. C. No. 6576, amendments thereto and subsequent issues thereof.

Issued November 9, 1907. Effective December 12, 1907.

Issued by David W. Longstreet, General Freight Agent, Memphis.
T. J. Hudson, General Traffic Manager, Chicago.
F. B. Bowes, Freight Traffic Manager, Chicago.
C. C. Cameron, Gen'l Frt. Agent, Chicago.

874 The following tariffs are hereby amended:

Tariff No.	I. C. C. No.	Application.
Supplement No. 4 to L-1380	Supplement No. 4 to 2558	Grain and Hay, reconsigned from Ohio River Crossings to Mississippi River and Y. & M. V. basing points.
" " 1 to E-3710	" " 1 " 3710	Commodities, reshipped Vicksburg, Miss., to Jackson, Miss.
" " 9 to F-3772	" " 9 " 3351	Corn and Bran, reshipped from Rives, Obion and Dyersburg, Tenn. to I. C. R. R., and The Y. & M. V. R. R. stations and points in Mississippi Valley Territory authorized by Tariff.
" " 2 to G-3881	" " 2 " 3663	C. D and F, reshipped Louisville, Ky. to Southeastern, Carolina and Mississippi Valley Points.
" " 6 " F-3884	" " 6 " 3413	Grain, reshipped Memphis, Tenn., to I. C. R. R., Y. & M. V. R. R. and Mississippi Valley Points.
" " 2 " K-3898	" " 2 " 3664	C. D. and F. reshipped from Henderson, Ky., to Nashville, Tenn., Lebanon, Tenn., points in Southeastern, Carolina and Mississippi Valley Territories.
" " 5 " A-8003	" " 5 " 1645	Corn and Oats, reconsigned from Louisville, Ky., to New Orleans, La., Mobile, Ala., and points taking same rates.
" " 7 " A-8004	" " 7 " 1646	Corn and Oats, reconsigned from Henderson, Ky., to New Orleans, La., Mobile, Ala., and poins taking same rates.
" " 6 " A-8005	" " 6 " 1647	Corn and Oats, recon-igned from Evansville, Ind., to New Orleans, La., Mobile, Ala., and points taking same rates.

"	"	9 "	A-8006	"	" 9 "	3134	Barley, Corn, Oats and Rye, reconsigned from Cairo, Ill., to New Orleans, La., Mobile, Ala., and points taking same rates.
"	"	8 "	A-8031	"	" 8 "	3355	Corn and Bran, reshipped from Rives, Obion and Dyersburg, Tenn., to I. C. R. R. and the Y. & M. V. R. R., stations, Mississippi Valley and Southeastern points, as specifically authorized by tariff.
"	"	1 "	B-8253	"	" 1 "	3467	Grain and Grain Products, reshipped from Natchez, Miss., to Hattiesburg and Laurel, Miss.
"	"	1 "	A-8481	"	" 1 "	2960	Wheat, reshipped from Cairo, Ill., to European ports.
"	"	1 "	B-12124	"	" 1 "	3476	Reconsignment of Hay, from Memphis, Tenn., to Mississippi Valley points.
"	"	2 "	A-12168	"	" 2 "	3087	Commodities, reshipped Vicksburg, Miss., to I. C. R. R. and The Y. & M. V. R. R. stations.
"	"	4 "	B-12412	"	" 4 "	3657	Grain, Grain Products and Hay, reshipped Nashville, Tenn., to Southeastern and Carolina Territories.

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Tariff No.				I. C. C. No.			Application.
Supplement No. 1 to D-12353				Supplement No. 1 to 3684			Grain, Grain Products, and Hay, reshipped Jackson, Miss., to G. & S. I. R. R. stations.
"	"	2 "	902-A	"	" 2 "	3773	Barley, Corn, Oats and Rye, etc., reconsigned Cairo, Ill., and Jackson, Miss., to I. C. R. R. (Southern Lines) stations.
"	"	4 "	904-B	"	" 4 "	3777	Grain, Grain Products and Hay, reconsigned Cairo, Ill., Henderson, Ky., Evansville, Ind., Vicksburg, Natchez, and Jackson, Miss., to The Y. & M. V. R. R. stations.

876 Illinois Central Railroad Company

(Southern Lines).

The Yazoo & Mississippi Valley R. R. Co.

In Connection with Transportation Companies Shown in Tariffs Amended.

Rate Circular No. 11-*A*

(Cancels Rate Circular No. 8-A),

Covering Rules and Regulations Governing Reconsignment, Diversion, Change of Consignee or Destination of Shipment En Route.

Cancellation.

Each of the Tariffs Enumerated on Reverse Side is Amended as Follows:

The following rule governing reconsignment, diversion, change of consignee or destination of shipments en route, is canceled:

"The rules of this Tariff will not apply on commodities when reshipped in original cars upon which reconsignment, diversion, change of consignee or destination is desired before the cars are unloaded. Such shipments will be subject to the rules and charges provided in Tariff No. 1495-A, I. C. C. No. A-6576, amendments thereto and subsequent issues thereof."

Rules and regulations shown in Tariffs and Supplements in effect prior to December 12, 1907, are restored.

Issued January 17, 1908. Effective February 20, 1908.

Issued by David W. Longstreet, General Freight Agent, Memphis.

T. J. Hudson, General Traffic Manager, Chicago.

F. B. Bowes, Freight Traffic Manager, Chicago.

C. C. Cameron, General Frt. Agent, Chicago.

Tariff No.	I. C. C. No.	Application.
Supplement No. 5 to L-1380 (Cancels Sup. No. 4)	Supplement No. 5 to 2558 (Cancels Sup. No. 4)	Grain and Hay, reconsigned from Ohio River Crossings to Mississippi River and Y. & M. V. basing points.
Supplement No. 2 to E-3727 (Cancels Sup. No. 1)	Supplement No. 2 to 3710 (Cancels Sup. No. 1)	Commodities, reshipped Vicksburg, Miss., to Jackson, Miss.
Supplement No. 4 to G-3881 (Cancels Sup. No. 2)	Supplement No. 4 to 3663 (Cancels Sup. No. 2)	C, D and F, reshipped Louisville, Ky., to Southeastern, Carolina and Mississippi Valley Points.
Supplement No. 8 to F-3884 (Cancels Sup. No. 6)	Supplement No. 8 to 3413 (Cancels Sup. No. 6)	Grain, reshipped Memphis, Tenn., to I. C. R. R., The Y. & M. V. R. R. and Mississippi Valley Points.
Supplement No. 3 to K-3898 (Cancels Sup. No. 2)	Supplement No. 3 to 3664 (Cancels Sup. No. 2)	C, D and F, reshipped from Henderson, Ky., to Nashville, Tenn., Lebanon, Tenn., points in Southeastern, Carolina and Mississippi Valley Territories.
Supplement No. 6 to A-8003 (Cancels Sup. No. 5)	Supplement No. 6 to 1645 (Cancels Sup. No. 5)	Corn and Oats, reconsigned from Louisville, Ky., to New Orleans, La., Mobile, Ala., and points taking same rates.
Supplement No. 10 to A-8004 (Cancels Sup. No. 7)	Supplement No. 10 to 1646 (Cancels Sup. No. 7)	Corn and Oats, reconsigned from Henderson, Ky., to New Orleans, La., Mobile, Ala., and points taking same rates.
Supplement No. 8 to A-8005 (Cancels Sup. No. 6)	Supplement No. 8 to 1647 (Cancels Sup. No. 6)	Corn and Oats, reconsigned from Evansville, Ind., to New Orleans, La., Mobile, Ala., and points taking same rates.
Supplement No. 11 to B-8006 (Cancels Sup. No. 9)	Supplement No. 11 to 3134 (Cancels Sup. No. 9)	Barley, Corn, Oats and Rye, reconsigned from Cairo, Ill., to New Orleans, La., Mobile, Ala., and points taking same rates.

Supplement No. 9 to B-8031 (Cancels Sup. No. 8)	Supplement No. 9 to 3355 (Cancels Sup. No. 8)	Corn and Bran, reshipped from Rives, Obion and Dyersburg, Tenn., to I. C. R. R. and The Y. & M. V. R. R., stations, Mississippi Valley and Southeastern points, as authorized by Tariff.
Supplement No. 2 to B-8253 (Cancels Sup. No. 1)	Supplement No. 2 to 3467 (Cancels Sup. No. 1)	Grain and Grain Products, reshipped from Natchez, Miss., to Hattiesburg and Laurel, Miss.
Supplement No. 2 to A-8481 (Cancels Sup. No. 1)	Supplement No. 2 to 2960 (Cancels Sup. No. 1)	Wheat, reshipped from Cairo, Ill., to European ports.
Supplement No. 2 to B-12124 (Cancels Sup. No. 1)	Supplement No. 2 to 3476 (Cancels Sup. No. 1)	Reconsignment of Hay, from Memphis, Tenn., to Mississippi Valley Points.
Supplement No. 3 to A-12168 (Cancels Sup. No. 2)	Supplement No. 3 to 3087 (Cancels Sup. No. 2)	Commodities, reshipped Vicksburg, Miss., to I. C. R. R., and the Y. & M. V. R. R. stations.
Supplement No. 2 to D-12353 (Cancels Sup. No. 1)	Supplement No. 2 to 3684 (Cancels Sup. No. 1)	Grain, Grain Products and Hay, reshipped Jackson, Miss., to G. & S. I. R. R.
Supplement No. 5 to B-12412 (Cancels Sup. No. 4)	Supplement No. 5 to 3657 (Cancels Sup. No. 4)	Grain, Grain Products and Hay, reshipped Nashville, Tenn., to Southern and Carolina Territories.

878 Illinois Central Railroad Company

(Southern Lines).

Supplement No. 6 to I. C. C. No. 3657.

In Connection with Transportation Companies Shown in Tariffs and Supplements.

Supplement No. 6

(Supplements Nos. 2, 3, 5 and 6 include all changes.)

To

B-12412.

Joint Freight Tariff.

Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw, at Nashville, Tenn.

Corrections.

Milling in Transit Rules:

Rule 2, page 1 of Tariff is corrected to read:

(2) Grain originating at points on the Illinois Central Railroad (Northern and Western Lines) and connections north of the Ohio River, when delivered to Illinois Central Railroad (Southern Lines), at Ohio River Crossings, or grain delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed herein, will be treated the same as grain originating at those points proper, it being understood that the protection of the through rates on the milled product is in no case to be extended to points north of the Ohio River, west of the Mississippi River or beyond the junction at which the Illinois Central Railroad (Southern Lines) receives the grain.

Reshipping Rules:

Rule 2, page 3 of Tariff is corrected to read:

(2) Shipments of the commodities specified originating at points on the Illinois Central Railroad (Northern and Western Lines) and connections north of the Ohio River when delivered to the Illinois Central Railroad (Southern Lines) at Ohio River Crossings or such shipments (irrespective of point of origin) delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed by this Tariff, will be treated as if originating at those points proper; it being understood that the protection of the through rates as hereinafter provided will in no case be extended to points north of the Ohio River, west of the Mississippi

River or beyond the junction at which the Illinois Central Railroad (Southern Lines) receives the property.

879 Shelling in Transit Rules:

Rule 2, page 5 of Tariff is corrected to read:

(2) Corn originating at points on the Illinois Central Railroad (Northern and Western Lines) and connections north of the Ohio River when delivered to the Illinois Central Railroad (Southern Lines), at Ohio River Crossings, or corn delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed herein, will be treated the same as corn originating at those points proper, it being understood that the protection of the through rates is in no case to be extended to points north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad (Southern Lines) receives the corn.

Issued April 8, 1908. Effective May 11, 1908.

MI., No. 3444. (Files Nos. A-70 and 99520.) (Authority No. A-3754.)

F. B. Bowes, Freight Traffic Manager, Chicago.

C. C. Cameron, General Freight Agent, Chicago.

Issued by David W. Longstreet, General Freight Agent, Memphis.

880 Illinois Central Railroad Company

(Southern Lines).

Supplement No. 7 to I. C. C. No. 3657

(Supplements Nos. 2, 3, 5, 6 and 7 are in effect and contain all changes.)

In Connection with Transportation Companies Shown in Tariff and Supplements.

Supplement No. 7.

(Supplements Nos. 2, 3, 5, 6 and 7 are in effect and contain all changes.)

To

B-12412.

Joint Freight Tariff.

Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw at Nashville, Tenn.

Additions, Cancellations and Changes Effected by This Supplement.

Addition.

Grain, Grain Products and Hay switched between switches, tracks, warehouses and industries on the Nashville Terminal Company's tracks may be reshipped or milled in transit.

When Grain, Grain Products and Hay are reshipped or Grain is milled in transit and the product shipped from Nashville, via Southern Railway, the terminal or transfer charge of one (1) cent per 100 pounds minimum $3.00 per car will be refunded.

Issued May 25, 1908. Effective July 1, 1908.
(A-750.) (M/L 3444.) (File 99776.) (Authority A-3754.)
F. B. Bowes, Freight Traffic Manager, Chicago.
C. C. Cameron, General Freight Agent, Chicago.
Issued by David W. Longstreet, General Freight Agent, Memphis.

881 Supplement No. 8 to I. C. C. No. 3657

(Supplements Nos. 2, 3, 5, 6, 7 and 8 are in effect and contain all changes.)

Illinois Central Railroad Company.

In Connection with Southern Railway FX3-108, Nashville, Chattanooga & St. Louis Ry. FX3-155, Louisville & Nashville Railroad FX3-88, and Other Transportation Companies Shown in Tariff and Supplements.

Supplement No. 8

(Supplements Nos. 2, 3, 5, 6, 7 and 8 are in effect and contain all changes.)

To

B-12412.

Joint Freight Tariff.

Covering Milling in Transit, Reshipping and Shelling in Transit of Grain, Grain Products, Hay and Straw, at Nashville, Tenn.

Issued June 13, 1908. Effective July 17, 1908.
Issued by David W. Longstreet, General Freight Agent, Memphis.
F. B. Bowes, Freight Traffic Manager, Chicago.
C. C. Cameron, General Freight Agent, Chicago.

882 *Supplement No. 8 to* B-12412.

Additions, Cancellations, and Changes Effected by this Supplement.

Addition.

Nashville, Chattanooga & St. Louis Railway, FX3-155.

The rates, rules and regulations provided for in Tariff and Supplements will apply in connection with the Nashville, Chattanooga & St. Louis Railway.

Changes.

Milling in Transit Rules:

Rule 3, page 1 of Tariff is changed to read:

3. The milled product may be forwarded to points in Southeastern and Carolina Territories (as provided in Tariff and Supplements) on or reached by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and their connections.

Rule 10, page 2 of Tariff is changed to read:

10. The difference between such proportions and the bill of lading rates will be refunded to shippers by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and carried on waybills as advanced charges. (The sum of said advanced charges and the proportions used in waybilling shipments from Nashville is the Nashville proper rate.)

Rule 14, page 2 of Tariff is changed to read:

14. The original freight bills, or certified copies, covering the movement of grain into Nashville shall be surrendered to the Agent of the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville, and the milling in transit arrangement shall apply only after such freight bills have been surrendered.

Rule 16, page 2 of Tariff is changed to read:

16. The Agents of the Nashville, Chattanooga & St. Louis Railway and the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

Reshipping Rules:

Rule 3, page 3 of Tariff is changed to read:

3. The reshipping authorized by this Tariff shall be confined to points of destination located in Southeastern and Carolina territories (as provided in Tariff and Supplements) on or reached by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and their connections, provided through rates and divisions are published by the Illinois Central Railroad in connection with the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and their connections from the points of origin specified, to the points of destination in said territories; and provided further, that through rates from Nashville to the same points of

destination are published by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway.

Rule 10, page 3 of Tariff is changed to read:

10. Bills of lading for the commodities reshipped shall be issued by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville, at the rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this tariff, to final destination.

883 Rule 12, page 4 of Tariff is changed to read:

12. The proportion accruing to the line west of Nashville out of the through rate from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination, to be shown on the waybill from Nashville as "advanced charges," such amount to be refunded direct to the shipper by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville at time of reshipment.

Rule 16, page 4 of Tariff is changed to read:

16. The original paid freight bills covering the movement into Nashville, or certified copies, shall be surrendered to the Agent of the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville, and reshipment shall not be permitted as provided herein until such freight bills have been surrendered.

Rule 17, page 4 of Tariff is changed to read:

17. Said freight bills shall be taken up and canceled by the Agent of the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville to prevent their subsequent use.

Shelling in Transit Rules:

Rule 3, page 5 of Tariff is changed to read:

3. The product may be forwarded to points in Southeastern and Carolina territories (as hereinafter described) on or reached by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and their connections.

Rule 10, page 6 of tariff is changed to read:

10. The difference between such proportions and the bill of lading rates will be refunded to shippers by the Nashville, Chattanooga & St. Louis Railway or the Southern Railway and carried on waybills as advanced charges. (The sum of said advance charges and the proportions used in waybilling shipments from Nashville is the Nashville proper rate.)

Rule 14, page 6 of Tariff is changed to read:

14. The original freight bills, or certified copies, covering the movement of corn in Nashville, shall be surrendered to the Agent of the Nashville, Chattanooga & St. Louis Railway or the Southern Railway at Nashville, and the shelling in transit arrangement shall apply only after such freight bills have been surrendered.

Rule 16, page 6 of Tariff is changed to read:

16. The Agents of the Nashville, Chattanooga & St. Louis Railway and the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

(Mailing List 3444.) (Files 155, part 22 and 99520.) (Authority A-3754.)

884 Supplement No. 9 to I. C. C. No. 3657 of the Illinois Central R. R. Co. Returned to said Illinois Central R. R. Co., on July 20, 1908, as illegal.

885 EXHIBIT MOORE No. 5.

I. C. C. No. 10774.

Supersedes I. C. C. No. 10301.

Southern Railway Co., Divisions Basis No. 7511.

General Freight Department.

Supersedes Division Basis No. 7206, Aug. 10, 1905.

I. C. C. No. 3640.

Illinois Central Railroad Company (Southern Lines) in Connection with Southern Railway and Transportation Companies Shown on Page 2 of Cover.

A–12412.

Joint Freight Tariff.

Milling in Transit and Reshipping of Grain, Grain Products, Hay and Straw, at Nashville, Tenn., when for Points in Southeastern and Carolina Territories.

Issued October 27, 1906. Effective November 28, 1906.
Issued by Charles C. Cameron, General Freight Agent, Memphis.
John Dwyer, Ass't Gen'l Fr't Ag't, Memphis.
T. J. Judson, Gen'l Trf. Mgr., Chicago.
Wm. Smith, Jr., Ass't Gen'l Fr't Ag't, Nashville.
F. B. Bowes, Fr't Trf. Mgr., Chicago.
Jos. Hattendorf, Ass't Gen'l Fr't Ag't, Memphis.
D. W. Longstreet, Gen'l Fr't Ag't, Louisville.

Issued December 4, 1906. Effective January 5, 1907.
Rates published in this issue are hereby authorized for use of Southern Railway Agents.
By G. W. Browder, General Freight Agent, Atlanta, Ga.
Station Tariff File No. 35.
File No. 47151 P.
Authority File No. 8580.
(Milling in Transit—Reconsignment of Grain, etc.)

886 This Tariff will apply in connection with following transportation Companies.

Alabama Great Southern R. R.
Albany & Northern Ry.
Atlanta & West Point R. R.
Atlanta & Birmingham Air Line Ry.
Atlantic Coast Line R. R.
Augusta Southern R. R.
Birmingham & Atlantic R. R.
Carrabelle, Tallahassee & Georgia R. R.
Central of Georgia Ry.
Charleston & Western Carolina Ry.
Chattahoochee Valley R. R.
Chattanooga Southern R. R.
Darien & Western R. R.
Douglas, Augusta & Gulf R. R.
Dublin & Southwestern R. R.
East Tennessee & Western North Carolina R. R.
Flint River & North Eastern R. R.
Florida East Coast Ry.
Florida & Georgia Ry.
Florida Railway Co.
Florida West Shore Ry.
Gainesville & Gulf Ry.
Gainesville Midland Ry.
Garbutt & Donovan Short Line Ry.
Georgia, Florida & Alabama Ry.
Georgia R. R.
Georgia Northern Ry. Co. of Georgia.
Georgia Southern & Florida Ry.
Hampton & Branchville R. R.
Hawkinsville & Florida Southern Ry.
Knight & Martin Tram R. R.
Knoxville & Augusta R. R.
Knoxville & Bristol Ry.
Lexington Terminal R. R. Co.
Linnville River R. R.
Little River R. R.
Live Oak & Gulf R. R.
Live Oak, Perry & Gulf R. R.
Louisville & Wadley R. R.
Macon & Birmingham Ry.
Macon, Dublin & Savannah R. R.
Millen & Southwestern R. R.
Milltown Air Line Ry.
Monroe R. R.
Nashville & Sparks R. R.
Northern Alabama R. R.
Ocilla & Valdosta R. R.
Register & Glenville Ry.
Reidsville & Southeastern R. R.
Savanah & Statesboro Ry.
Seaboard Air Line Ry.
South & Western Ry.
Southern Ry.
South Georgia & West Coast Ry.
Sylvania Central Ry.
Talbotton R. R.
Tallassee & Montgomery Ry.
Tellico Ry.
Tennessee & North Carolina R. R.
Tuskogee R. R.
Union Point & White Plains R. R.
Valdosta Southern Ry.
Virginia & Southwestern Ry.
Wadley Southern Ry.
Western & Atlantic R. R.
Western Ry. of Alabama.
Wrightsville & Tennille R. R.
Yellow River R. R.

887 *Milling in Transit at Nashville, Tenn.*

The following rates and rules will apply on Grain milled in transit at Nashville:

1. Grain from—

Louisville, Ky.
Owensboro, Ky.
Evansville, Ind.
Henderson, Ky.
Uniontown, Ky.
Brookport, Ill.
Paducah, Ky.
Cairo, Ill.
East Cairo, Ky.
Memphis, Tenn.

And local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville, Division, Nashville to Henderson, Ky., inclusive. Tennessee Division, Paducah, Ky., to Jackson, Tenn., and Memphis, Tenn., inclusive.

2. Grain originating on connecting lines at points north of the Ohio River, when delivered to the Illinois Central Railroad (Southern Lines), at Ohio River Crossings, or grain delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed herein, will be treated the same as grain originating at those points proper, it being understood that the protection of the through rates on the milled product is in no case to be extended to point north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the grain.

3. The milled product may be forwarded to points in Southeastern and Carolina territories (as hereinafter described) on or reached by the Southern Railway and its connections.

4. Milling in transit under the following rules shall be confined to routes over which through rates and divisions are in effect via Nashville, from the point at which the transit of the grain commences within the territory prescribed by this Tariff to the destination of the milled product.

5. The through rates in effect (at date of forwarding of the milled product) from the point at which the transit of the grain commences within the territory prescribed by this Tariff, to the final destination of the milled product, shall be protected as follows:

On Flour in barrels, the through rate on Flour in barrels shall be protected.

On Flour in sacks, the through rates on Flour in sacks shall be protected.

On Meal, Grits and Hominy, the through rates on those commodities, respectively, shall be protected.

On Meal Feed and Offal, the through rates on these commodities, respectively, shall be protected.

888 6. For every 270 pounds of Wheat received at the mill, the following percentage of product may be forwarded:

Flour, 196 lbs., equivalent to	72.5%
Bran, 70 lbs., equivalent to	26.0%
(Waste), 4 lbs., equivalent to	1.5%
Total, 270 lbs., equivalent to	100 %

For every 56 pounds of corn received at the mill, 56 pounds of meal, grits or hominy may be forwarded; or for every 56 pounds of corn received at the mill, 47 pounds of meal, grits or hominy, and 9 pounds of meal bran may be forwarded.

The foregoing is equal to the following ratio, which may be used as a matter of convenience:

Meal, grits or hominy	83.93%
Meal Bran	16.07%
Total	100 %

7. Grain to be milled in transit must be waybilled to Nashville at the full tariff rates.

8. Bills of lading for the milled product shall be issued at the published tariff rates in effect from Nashville at date of forwarding.

9. The milled product shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates (in effect at date of forwarding) on the milled product from the point at which the transit of the grain commences, within the territory prescribed by this tariff, to the final destination of the product.

10. The difference between such proportions and the bill of lading rates, will be refunded to shippers by the Southern Railway and carried on waybills as advanced charges. (The sum of said advanced charges and the proportions used in waybilling shipments from Nashville is the Nashville proper rate.)

11. The difference, if any, between the rate on the grain from the point at which the transit of the grain commences, within the territory prescribed by this Tariff, to Nashville, and the proportion west of Nashville of the through rate on the milled product to its final destination to be refunded through the Freight Claim Department. No "charges" or proportions accruing to lines north of the Ohio River, west of the Mississippi River, or beyond the junction at which the Illinois Central Railroad receives the grain, will be refunded.

12. If the rates paid on the grain from the point at which the transit of the grain commences within the territory prescribed by this tariff to Nashville is less than the proportion to Nashville of the through rate on the milled product to its final destination, the line east of Nashville shall so report, and pay through the Freight Claim Department to the line west of Nashville the amount due.

(*a*) The line from Nashville to final destination of the product will charge its proportion of the through rate on said product from the point at which the transit of the grain commences within the territory prescribed by this Tariff to such final destination.

889 (*b*) If the combination based on charges to Nashville on the grain, plus the proportion of the milled product rate from Nashville to final destination, makes a less total from the point at which the transit of the grain commences within the territory prescribed by this Tariff to such final destination than the through rate in effect on the milled product at date of forwarding from Nashville, then the charge from Nashville to destination shall be advanced sufficiently to maintain such established through rate. Any excess so charged shall be promptly reported and paid over to the line handling the grain into Nashville.

13. Waybills for the milled product from Nashville shall show the point at which the transit of the grain commences within the territory prescribed by this Tariff and the through rates and divisions on the product from such point to final destination.

14. The original freight bills, or certified copies, covering the movement of the grain into Nashville, shall be surrendered to the agent of the Southern Railway at Nashville, and the milling in transit arrangement shall apply only after such freight bills have been surrendered.

15. Said freight bills shall be taken up and cancelled, so as to prevent their subsequent use.

16. The agent of the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

17. Freight bills for wheat dated July 1st of one year to June 30th of the succeeding year, that remain unused on July 1st, may be honored for six months from July 1st, provided said bills are not more than twelve months old.

Freight bills for corn, dated November 1st of one year to October 31st of the succeeding year, that remain unused on November 1st, may be honored for six months from November 1st, provided said bills are not more than twelve months old.

18. Exchange of freight bills will be permitted from dealers and brokers to millers, for use in milling in transit; in each case the party transferring the bill must endorse and sign as follows: "The property represented by this freight bill has been sold and delivered to —."

Exchange of freight bills between dealers will not be permitted and under no circumstances will such freight bills be accepted.

890 *Reshipping at Nashville, Tenn.*

The following rates and rules will apply on Grain, Grain Products, Hay and Straw, reshipped at Nashville:

1. Grain, Grain Products, Hay and Straw from—

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And Grain and Grain Products from local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Nashville, Tenn., to Henderson, Ky. inclusive; Tennessee Division, Paducah, Ky., to Jackson, Tenn., and Memphis, Tenn., inclusive. (Reshipping of Hay and Straw, when from Illinois Central Railroad local or junction points south of the Ohio River will not be permitted.)

2. Shipments of the commodities specified originating on connecting lines at points north of the Ohio River when delivered to the Illinois Central Railroad (Southern Lines) at Ohio River Crossings or such shipments (irrespective of point of origin) delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed by this Tariff, will be treated as if originating at those points proper; it being understood that the

protection of the through rates as hereinafter provided will in no case be extended to points north of the Ohio River, west of the Mississippi River or beyond the junction at which the Illinois Central Railroad receives the property.

3. The reshipping authorized by this Tariff shall be confined to points of destination located in Southeastern and Carolina Territories (as hereinafter described) on or reached by the Southern Railway and its connections, provided through rates and divisions are published by the Illinois Central Railroad in connection with the Southern Railway and its connections from the points of origin specified to the points of destination in said territories; and provided further, that through rates from Nashville to the same points of destination are published by the Southern Railway.

4. On such commodities reshipped, the through rates or authorized proportional rates, if any, in effect at date of reshipment will be protected from the points of origin specified to final destination, subject to the following rules:

5. Reshipping under this Tariff, shall be confined to routes over which through rates and divisions are in effect via Nashville, from the point at which the transit of the property commences within the territory prescribed by this tariff to final destination.

6. The through rates in effect at date of reshipment shall be protected from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination.

7. Shipments shall be billed at full tariff rates to Nashville.

8. The weight reshipped shall not exceed the weight shown on the freight bills and bills of lading covering the shipments into Nashville.

891 9. The commodities reshipped must be of the same character as received at Nashville; in other words, hay shall not be shipped on grain freight bills, nor vice versa; nor shall one class of grain be reshipped on freight bills covering another class of grain, nor shall milled products be reshipped on freight bills covering grain or hay, nor vice versa, nor one kind of milled product reshipped on freight bills covering another kind.

10. Bills of lading for the commodities reshipped shall be issued by the Southern Railway at Nashville, at the rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff, to final destination.

11. Shipments shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination, except in case the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville, plus the proportion of the through rate from Nashville to final destination, make a less total to such final destination than the through rate from such point in effect at date of reshipment, then the charge from *such point in effect at date of reshipment, then the charge from* Nashville to destination shall be

14. The original freight bills, or certified copies, covering the movement of the grain into Nashville, shall be surrendered to the agent of the Southern Railway at Nashville, and the milling in transit arrangement shall apply only after such freight bills have been surrendered.

15. Said freight bills shall be taken up and cancelled, so as to prevent their subsequent use.

16. The agent of the Southern Railway shall keep record of inbound and outbound shipments on the forms prescribed for this purpose.

17. Freight bills for wheat dated July 1st of one year to June 30th of the succeeding year, that remain unused on July 1st, may be honored for six months from July 1st, provided said bills are not more than twelve months old.

Freight bills for corn, dated November 1st of one year to October 31st of the succeeding year, that remain unused on November 1st, may be honored for six months from November 1st, provided said bills are not more than twelve months old.

18. Exchange of freight bills will be permitted from dealers and brokers to millers, for use in milling in transit; in each case the party transferring the bill must endorse and sign as follows: "The property represented by this freight bill has been sold and delivered to —."

Exchange of freight bills between dealers will not be permitted and under no circumstances will such freight bills be accepted.

890 *Reshipping at Nashville, Tenn.*

The following rates and rules will apply on Grain, Grain Products, Hay and Straw, reshipped at Nashville:

1. Grain, Grain Products, Hay and Straw from—

Louisville, Ky.	Brookport, Ill.
Owensboro, Ky.	Paducah, Ky.
Evansville, Ind.	Cairo, Ill.
Henderson, Ky.	East Cairo, Ky.
Uniontown, Ky.	Memphis, Tenn.

And Grain and Grain Products from local and junction points on the Illinois Central Railroad, Louisville Division, Horse Branch, Ky., to East Cairo, Ky., inclusive; Nashville Division, Nashville, Tenn., to Henderson, Ky. inclusive; Tennessee Division, Paducah, Ky., to Jackson, Tenn., and Memphis, Tenn., inclusive. (Reshipping of Hay and Straw, when from Illinois Central Railroad local or junction points south of the Ohio River will not be permitted.)

2. Shipments of the commodities specified originating on connecting lines at points north of the Ohio River when delivered to the Illinois Central Railroad (Southern Lines) at Ohio River Crossings or such shipments (irrespective of point of origin) delivered to the Illinois Central Railroad at junction points south of the Ohio River within the boundaries prescribed by this Tariff, will be treated as if originating at those points proper; it being understood that the

rotection of the through rates as hereinafter provided will in no ase be extended to points north of the Ohio River, west of the Mis-issippi River or beyond the junction at which the Illinois Central Railroad receives the property.

3. The reshipping authorized by this Tariff shall be confined to oints of destination located in Southeastern and Carolina Territories as hereinafter described) on or reached by the Southern Railway nd its connections, provided through rates and divisions are pub-ished by the Illinois Central Railroad in connection with the South-rn Railway and its connections from the points of origin specified o the points of destination in said territories; and provided further, hat through rates from Nashville to the same points of destination re published by the Southern Railway.

4. On such commodities reshipped, the through rates or author-zed proportional rates, if any, in effect at date of reshipment will e protected from the points of origin specified to final destination, ubject to the following rules:

5. Reshipping under this Tariff, shall be confined to routes over which through rates and divisions are in effect via Nashville, from he point at which the transit of the property commences within the erritory prescribed by this tariff to final destination.

6. The through rates in effect at date of reshipment shall be pro-ected from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination.

7. Shipments shall be billed at full tariff rates to Nashville.

8. The weight reshipped shall not exceed the weight shown on the freight bills and bills of lading covering the shipments into Nash-ville.

891 9. The commodities reshipped must be of the same char-acter as received at Nashville; in other words, hay shall not be shipped on grain freight bills, nor vice versa; nor shall one class of grain be reshipped on freight bills covering another class of grain, nor shall milled products be reshipped on freight bills covering grain or hay, nor vice versa, nor one kind of milled product reshipped on freight bills covering another kind.

10. Bills of lading for the commodities reshipped shall be issued by the Southern Railway at Nashville, at the rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff, to final destina-tion.

11. Shipments shall be waybilled from Nashville at the proportions (accruing east of that point) of the through rates in effect (at date of reshipment) from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destina-tion, except in case the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville, plus the proportion of the through rate from Nashville to final destination, make a less total to such final destina-tion than the through rate from such point in effect at date of re-shipment, then the charge from *such point in effect at date of re-shipment, then the charge from* Nashville to destination shall be

advanced sufficiently to maintain such established through rate. Any excess so charged shall be promptly reported and paid over to the line handling the property into Nashville.

12. The proportion accruing to the line west of Nashville out of the through rate from the point at which the transit of the property begins within the territory prescribed by this Tariff to final destination, to be shown on the waybill from Nashville as "advanced charges," such amount to be refunded direct to the shipper by the Southern Railway at Nashville at time of reshipment.

13. The difference, if any, between the rate paid from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville, and the proportion west of Nashville of the through rate from such point to final destination referred to in the preceding paragraph as "advanced charges" will be refunded through the Freight Claim Department.

14. In no case shall there be refunded at Nashville an amount in excess of the charge from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville. In case the proportion of the through rate from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville is greater than the rate charged to Nashville, the excess shall be deducted from the proportion (west of Nashville) of the through rate from such point to final destination, and added to the proportion east of Nashville, so that in no case will the amount of "advanced charges" way-billed from Nashville be greater than the charges from the point at which the transit of the property commences within the territory prescribed by this Tariff to Nashville. The excess shall be shown on the waybills from Nashville as undercharges and as separate items in the freight column of such way-bills, and will be refunded to the line west of Nashville through the Freight Claim Department.

15. Waybills from Nashville shall show the point at which the transit of the property commences within the *property* prescribed by this Tariff, and the through rates and divisions from such points to final destination.

892 16. The original paid freight bills covering the movement into Nashville, or certified copies, shall be surrendered to the Agent of the Southern Railway at Nashville, and reshipment shall not be permitted as provided herein until such freight bills have been surrendered.

17. Said freight bills shall be taken up and canceled by the Agent of the Southern Railway at Nashville to prevent their subsequent use.

18. Freight bills will not be honored for reshipment when more than ninety days old.

Description of Territories of Destination as Referred to Herein.

Southeastern Territory.

Points east of the Mobile & Ohio R. R., from Mobile to Corinth, Miss., (not including Aberdeen, Columbus or West Point, Miss.),

and on and south of the Memphis Division of the Southern Railway from Corinth (but not including Corinth), to and including Chattanooga, thence via Southern Railway to but not including Cleveland, Tenn., and thence south and west of the Southern boundary line of the Carolina Territory as described below.

Carolina Territory.

Points on and north and east of a line drawn from Wilmington, N. C., via the Atlantic Coast Line through Florence, S. C., to Columbus, S. C., thence via the Southern Railway through Alston, Newberry, Greenwood, Belton, Anderson and Seneca to Walhalla, S. C., thence via an imaginary direct line from Walhalla through Murphy, N. C., to Cleveland, Tenn., thence via a line drawn just south of the Southern Railway from Cleveland to Chattanooga (not including Chattanooga), and points on and south of the Southern Railway from Chattanooga, Tenn., through Cleveland, Athens and Knoxville to Bristol (including Bristol), also Knoxville and Ohio Division of the Southern Railway between Jellico and Knoxville (not including Jellico), also points south of the main line of the Norfolk & Western Ry., from Bristol, Tenn., to Norfolk, Va., thence on and west of the Atlantic Seaboard to Wilmington, N. C., the point of beginning.

(Mailing List 3444.) (File Nos. 231, 30518-Y, 99520, 88521.) (Authority 3754.)

893 *Am'd't No. 1 to I. C. C. No.* 10774.

Southern Railway Co.—Division Basis No. 7512.

General Freight Department.

Supplement No. 1 to Division Basis No. 7512.

Supplement No. 1 to I. C. C. No. 3640.

Illinois Central Railroad Company.

(Southern Lines)

In Connection with Southern Railway and Transportation Companies Shown in Tariff.

Supplement No. 1 to Joint Freight Tariff A-12412.

Milling in Transit and Reshipping of Grain, Grain Products, Hay, and Straw at Nashville, Tenn., when for Points in Southeastern and Carolina Territories.

Addition.

Add to paragraph 1, page 1, also to paragraph 1, on page 3, as a part of the Tennessee Division, the following stations, viz: East Cairo, Ky., to Fulton, Ky. inclusive.

Issued October 29, 1906. Effective November 30, 1906.
Issued by Charles C. Cameron, General Freight Agent, Memphis.
John Dwyer, Ass't Gen'l Frt. Agt., Memphis.
T. J. Hudson, Gen. Trf. Mgr., Chicago.
Wm. Smith, Jr., Ass't Gen'l Agt., Nashville.
F. B. Bowes, Frt. Trf. Mgr., Chicago.
Jos. Hattendorf, Ass't Gen'l Frt. Agt., Memphis.
D. W. Longstreet, Gen'l Frt. Agent, Chicago.

894 Issued December 5, 1906. Effective January 6, 1907.
Rules published in this issue are hereby authorized for use of Southern Railway Agents.
By G. R. Browder, General Freight Agent, Atlanta, Ga.
Station Tariff File No. 35. File 17161 P. Authority File No. 85580.
(Milling in Transit—Reconsignment of Grain, etc.)

895 Sup't No. 2 to Division Basis No. 7511.

Sup't 2 to I. C. C. No. 10774.

Freight Tariff of Southern Railway Company in Connection with Participating Carriers Named in Tariff.

Milling in Transit and Reshipping of Grain, Grain Products, Hay, and Straw at Nashville, Tenn., when for Points in Southeastern and Carolina Territories.

Changes.

Change Note 18 page 2 and Note 16 page 4 to read as follows:
"There shall be no trading of any expense bills (covering grain and hay into Nashville) between receivers or shippers of grain and hay at Nashville or between receivers and millers of grain at Nashville, except where there has been an actual transfer of grain or hay by sale to cover the amount of the expense bills, then the transfer of expense bills must accompany the transfer of the grain. Said transfer of expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by authorized railroad agent. In no case will there be permitted the transfer of expense bills when the sale is of grain arriving at Nashville via river or wagon.
Issued March 17, 1908. Effective April 21, 1908
By G. R. Browder, Ass't General Freight Agent, Atlanta, Ga.
Station Tariff File No. 35.
(Milling in Transit—Reconsignment of Grain, etc.)
Authority File No. 8580. File 47161. Desk 7.

896 EXHIBIT MOORE No. 5.

Circular No. 1401-A Supersedes Circulars No. 743, 1075, 1083 and 1181-A.

I. C. C. No. 946-A Supersedes I. C. C. No. 566-A and Amendments.

Circular—Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D and F and Sack Flour at Nashville and West Nashville, Tenn.

Issued May 7, 1904. Effective May 17, 1904.
By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.
Approved: H. F. Smith, Traffic Manager.
Ex. List. L. K. W., F. H. D., D. B. C., S. D. C., W. T. H., W. L. N., Grain Dealers.
File 1831 E. Pro. No. 27371-A.

897 *Rules Governing*

Reshipping at Nashville and West Nashville, Tenn.

Consignments of grain, hay, straw and milled products from and through Louisville, Ky., Evansville, Ind., Cairo, Ill., Belmont, Mo., Paducah, Ky., Hickman, Ky., and Memphis, Tenn.; also from points south of points named, but north of Nashville, destined to Nashville or West Nashville, may be reshipped, from Nashville or West Nashville, to points in Atlanta-Montgomery (see note) and Carolina Territories, including South Atlantic points, provided rates are published from Nashville, in the current Tariffs of this Company, to points of destination in the territories named.

For detailed information as to rates, see current tariffs.

On such shipments referred to above, reshipped, the through rates or authorized proportional rates, if any, in effect at date of reshipment, will be protected from points of origin above named to destination, subject to the following rules:

1. Re-shipping shall be confined to routes over which through rates and divisions are in effect via Nashville, from the points of origin of the hay, grain, straw or milled product to destination, it being understood that the protection of through rates is not in any case extended to points north of the Ohio and west of the Mississippi Rivers.

2. Shipments of hay, grain, straw or milled products shall be billed at the full tariff rate from point of origin to Nashville and West Nashville, Tenn.

3. The weight re-shipped must not exceed the weight on expense bills and bills of lading for the shipments to Nashville and West Nashville.

4. The articles re-shipped must be the same as the articles brought into Nashville, in other words, hay shall not be re-shipped on grain expense bills, or vice versa, nor shall one class of grain be reshipped on expense bill covering another class of grain, nor shall milled products be re-shipped on expense bills covering grain or hay or vice versa, nor one kind of milled product be re-shipped on expense bills covering another kind.

5. Bills of lading for re-shipped articles shall be issued by the Agents at Nashville and West Nashville, at rates in effect on date of re-shipment, from the original point of shipment as provided for in paragraph one to point of destination. Shipments shall be way-billed from Nashville and West Nashville at proportions beyond Nashville and West Nashville of such through rates; the proportions which would accrue as revenue to the line north or west of Nashville out of the through rate from the point of origin to destination (had the shipment been forwarded on through way-bill), to be carried on the way-bill from Nashville or West Nashville as "advanced charges." Said advance charges to be refunded direct to their shipper by the Agent at Nashville or West Nashville at the time of re-shipment.

898 6. The difference, if any, between the rate paid from original point of shipment as provided for in paragraph one to Nashville and West Nashville and such proportion referred to above as "advanced charges" up to Nashville and West Nashville, of the through rate to final destination, must be refunded through the claim account by claim in regular manner prepared by shipper on following forms:

Grain, hay, straw, milled product, via Cairo and Martin, No. 1226 new.

Grain, hay, straw, milled product, via other routes, No. 1103 new showing detailed statement of inbound and outbound movement, which claims after checking and vouchering will be forwarded to Agents at Nashville and West Nashville for payment, they in turn remitting to Treasurer who will credit their account.

7. In no case shall there be refunded at point of re-shipment (Nashville and West Nashville) an amount in excess of the local rate from original point of shipment to Nashville or West Nashville. In case the proportion of the through rate from original shipping point to Nashville or West Nashville is greater than the local rate charged to Nashville or West Nashville, the difference or excess shall be deducted from the proportion of the through rate up to Nashville or West Nashville and added to the proportion from Nashville and West Nashville, so that, in no case will the amount of "advanced charges" way-billed from Nashville and West Nashville be greater than the local charges on the shipment to Nashville and West Nashville. This difference or excess in rate and revenue, shall be taken up on the way-bill from Nashville and West Nashville as an undercharge, adding same as a separate item in the freight column of the way-bill, to be refunded to the line up to Nashville and West Nashville by the Claim Department.

8. Way-bills from Nashville and West Nashville shall show the

original point of shipment of the article re-shipped and the through rate and divisions from point of origin, as provided for in paragraph one, to destination.

9. The original expense bill, or a certified copy of same, shall be surrendered to the agent at Nashville or West Nashville of the line over which it is desired to re-ship, and re-shipment shall not be permitted until after such expense bill is surrendered.

10. The expense bill shall be taken up and cancelled by the Agent at Nashville or West Nashville, so as to prevent its use a second time.

11. The Claim Agent shall keep a record of each bill of lading and expense bill, indorsing on said expense bill, for the guidance of the agents, the rate and divisions north and south of the re-shipping point together with the weight and particulars of the outbound movement, which record shall be also transferred and permanently maintained on the forms provided for the purpose, to wit:

Shipments inbound via Cairo and Martin. From No. 1226, New.

12. All expense bills become null and void for re-shipping purposes 90 days from date of issuance, and are thereafter valueless for that purpose.

13. It will not be permissible to interchange between L. & N. R. R., and the N. C. & St. L. Ry., expense bills at Nashville and West Nashville on re-shipped business when a portion of said expense bill has been used by either line. An expense bill once presented to either line must be used up in re-shipments via that line.

899 *Definition of Territories of Destination.*

Carolina Territory.

To include Wilmington, N. C., and points on and north and east of a line drawn from Wilmington, N. C., via W. C. & A. Ry., division of the Atlantic Coast Line, to Columbus, S. C.; thence via the Southern Railway through Alston, Newberry, Greenwood, Abbeville, Belton, to Anderson; thence via Blue Ridge Railway and Seneca to Walhalla, S. C.; thence via an imaginary line from Walhalla, S. C., through Murphy, N. C., to Cleveland, Tenn.; thence via a line drawn just south of the Southern Railway from Cleveland, Tenn., to Chattanooga, Tenn. (not including Chattanooga), and points on and south of the Southern Railway from Chattanooga, Tenn., through Cleveland, Athens, and Knoxville to Bristol, Tenn. (including Bristol); also Knoxville and Ohio Division of the Southern Railway between Jellico and Knoxville, Tenn. (not including Jellico); also points south of the main line of the Norfolk & Western Railway from Bristol, Tenn., to Norfolk, Va.; thence on and west of the Atlantic Seaboard to Wilmington, N. C., the point of beginning.

Southeastern Territory.

Points east of the Mobile & Ohio Railroad from Mobile to Corinth Miss. (not including Aberdeen or Columbus, Miss.), and on and south of the Memphis Division of the Southern Railway from Corinth (but

not including Corinth) to and including Chattanooga, Tenn.; thence via the Southern Railway to but not including Cleveland, Tenn. thence south and west of the southern boundary line of Carolina Territory as previously described.

Southeastern Territory to be subdivided as follows:

(*a*) Atlanta Territory:

To include points to which the rates from Cincinnati and Ohio River Crossings west thereof are the same, described as follows:

Points south and west of Carolina Territory, on and south of the Memphis Division of the Southern Railway from Chattanooga, Tenn., (including Chattanooga), to but not including Decatur, Ala., east of the main line to Louisville & Nashville Railroad from Decatur to Birmingham (excluding Birmingham); thence north and east of the Columbus & Western Division of the Central of Georgia to but not including Columbus, Ga., and east of the east bank of the Chattahoochee and Apalachicola rivers from Columbus, Ga., to the Gulf of Mexico.

(*b*) Montgomery Territory:

To include points to which the rates from Cincinnati are higher than from Ohio River crossings west thereof, and described as follows:

Points east of the Mobile & Ohio Railroad from Mobile to Corinth (but not including Aberdeen, Columbus, or Corinth, Miss.); thence on and south of the Memphis Division of the Southern Railway to Decatur, Ala., and on and west of the main line of the Louisville & Nashville Railroad from Decatur to Birmingham (including Birmingham and Group); thence on and west of the Columbus & Western Division of the Central of Georgia Railway to and including Columbus, Ga., and on and west of the east bank of the Chattahoochee and Apalachicola rivers from Columbus, Ga., to the Gulf of Mexico.

900 Circular No. 1412-A Amends Circular 1401-A.

Supplement No. 1 to I. C. C. No. 946-A.

Supplement No. 1 to Circular 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Class C, D, and E, and Sack Flour at Nashville and West Nashville, Tenn.

Issued May 20, 1904. Effective May 27, 1904.
By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.
Approved: H. F. Smith, Traffic Manager.
Ex. O. List—L. K. W., S. D. C., W. T. H., W. L. N., Grain Dealer
Filed as noted Pro. No. 27371-A.

901 *Rules Governing Reshipping at Nashville and West Nashville, Tenn.*

To N. C. & St. L. Local Stations—West of Nashville.

Consignments of grain from and through Cairo, Ill., Belmont, Mo., Paducah, Ky., Hickman, Ky., and Memphis, Tenn., via N. C. & St. L. Ry., destined to Nashville or West Nashville, may be reshipped, from Nashville or West Nashville, to points on the Nashville, Chattanooga & St. Louis Railway west of Nashville.

On such shipments a reduction of 50 per cent will be made from the regular tariff rate from Nashville or west Nashville, provided that the aggregate rate on any shipment shall not be less than the direct rate from Cairo, Belmont, Paducah, etc., to destination. This basis will not apply on grain consigned to mills. Shipments to be billed into and out of Nashville and West Nashville at published tariffs rates and upon compliance with the rules governing application of expense bills and verification of movement Claim Agent will make settlement on above basis (Cor. file 2233).

Application of Tariffs.

On re-shipments of hay, grain, etc., originating at or via points on the Louisville & Nashville Railroad, the through rate basis must be determined by use of L. & N. Tariffs. In case the point of destination to which the re-shipment is to be made does not appear in the publication of the L. & N. R. R., the through rate basis outlined in the addenda for L. & N. R. R., will not apply, but the shipment must be charged at the regular Nashville prower rate and divisions, unless otherwise provided, except that to prepay stations located between points to which rates are published in current tariffs of L. & N. R. R., the next higher rate on either side of destination may be applied.

On re-shipments of hay, grain, etc., originating at or via points on the N. C. & St. L. Ry., the through rate basis must be determined by use of N. C. & St. L. Ry. Tariffs. In case the point of destination to which the re-shipment is to be made does not appear in the publication of the N. C. & St. L. Ry., the Claim Agent will communicate with the Rate Department for information as to rate. (Reissue Cir. 743-A.)

902 Circular No. 1419-A. Amends Cir. No. 1401-A.

Supersedes No. 2 to I. C. C. No. 946-A.

Supplement No. 2 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipped Articles Embraced in Classes C, D, & F, and Sack Flour at Nashville and West Nashville, Tenn.

Switching on Grain from Elevator.

On Grain brought into Nashville by the Nashville, Chattanooga and St. Louis, and stored in Elevator at West Nashville, and moved from Elevator to local dealers or consumers at Nashville, Proper, the Switching charge will be reduced one-half upon evidence of movement into and out of elevator.

Issued May 27, 1904. Effective June 3, 1904.

By Geo. R. Knox, General Freight Agent, Nashville Tennessee.

Approved: by H. F. Smith, Traffic Manager.

Ex. List L. K. W. S. D. C. W. T. H. W. L. N.

File 924. 2119-N. Cwm. Authority Pro. No. 27853-A.

903 Circular No. 1546-A. Supersedes in Conflict Cir. No. 1401-A.

Amendment No. 3 to I. C. C. No. 946-A. Supersedes in Conflict I. C. C. 946-A.

Supplement No. 4 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F, and Sack Flour at Nashville and West Nashville, Tenn.

To obviate misunderstanding of the third paragraph Circular No. 1401-A effective May 7, 1904, respecting the protection of rates on C, D, & F, traffic reshipped at Nashville, it should be understood that the N. C. & St. L. Ry. is not at present protecting proportional rates from Louisville and Cincinnati on such traffic moving into Nashville via Louisville and Cincinnati. Shipments of articles embracing Classes C, D, & F, from Louisville and Cincinnati or points beyond via Louisville and Cincinnati to Nashville reconsigned to Southeastern points, the Louisville and Cincinnati rates applicable from Louisville and Cincinnati Proper, as the case may be, are applied from these gateways.

Issued November 7, 1904. Effective November 10th, 1904.

By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.

Approved by H. F. Smith, Traffic Manager.

Ex. List. List. File 3/1831-N. ‹sw. Authority Pro. No. 29847-A.

904 Circular No. 2149-A (Cor.). Amends R. I. No. 1401-A.

Amendment No. 4 to I. C. C. No. 946-A. Amends I. C. C. No. 946-A.

Supplement No. 1 to Addenda "E" to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

Refer to Addenda "E" and substitute the following:

Grain and Grain Products originating at stations on the N. C. & St. L. Ry., west of Nashville from which through rates are published to Richmond, Lynchburg and other Virginia common points in Grain and Grain Product Tariff No. 9, I. C. C. 1264-A, dated May 31st, 1906, or subsequent issues, may be shipped to Nashville and West Nashville and reshipped thence to Richmond, Lynchburg and Virginia common points protecting the through rates currently in effect from the original shipping point to ultimate destination via routes in connection with which rates apply on direct movement.

Grain and Grain Products originating at stations north or west of Nashville (other than N. C. & St. L. Ry. stations) from which no through rates are published in connection with N. C. & St. L. Ry., via Nashville to Richmond, Lynchburg and common points, the N. C. & St. L. Ry. will protect the proportional rate currently in effect from Nashville to Richmond, Lynchburg and common points (See Nashville Eastern Tariff No. 4, I. C. C. No. 1261-A or subsequent issues thereof) upon surrender and cancellation of expense bills indicating the movement of grain or grain products into Nashville by rail, provided the sum of the rate into Nashville and the proportional rate thence will not be less than the current rates from Nashville proper, in which event the Nashville proper rate will be applied.

Subject to rules and regulations published in Circular No. 1401-A and amendments.

Note.

Supersedes Circular No. 2149-A, Advance Notice No. 4 to I. C. C. No. 566-A, incorrectly issued as supplement to obsolete issue.

Issued Sept. 24, 1906. Effective Oct. 27, 1906.

By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.

Approved by H. F. Smith, Traffic Manager.

Ex. List Mills & Grain Dealers at Nashville and West Nashville.

EN. WTH. LKW. SDC. FHD. DBC.

File 838-E. C. B. Authority Pro. 38956-A.

905 Circular No. 1620-A. Cancels in Conflict Cir. No. 1412-A.

Amends Cir. No. 1401-A.

Amendment No. 4 to I. C. C. No. 946-A. Amends I. C. C. No. 946-A.

Supplement No. 5 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F, and Sack Flour at Nashville and West Nashville, Tenn., to N. C. & St. L. Ry. Local Stations West of Nashv.

Consignments of Grain and Grain Products, from and through Cairo, Ill., Belmont, Mo., Paducah, Ky., Hickman, Ky., and Memphis, Tenn., via Nashville, Chattanooga & St. Louis Railway, destined to Nashville, or West Nashville, may be reshipped from Nashville or West Nashville to points on the Nashville, Chattanooga & St. Louis Railway west of Nashville.

On such shipments a reduction of 50 per cent will be made from the regular tariff rate from Nashville or West Nashville, provided that the aggregate rate on any shipment shall not be less than direct rate from Cairo, Belmont, Paducah, etc., to destination. This basis will not apply on grain consigned to mills. Shipments to be billed into and out of Nashville and West Nashville, at published tariff rates and upon compliance with the rules governing application of expense bills and verification of movement Claim Agent will make settlement on above basis. (Corr. file 2233.)

Issued January 27th, 1905. Effective February 2nd, 1905.
By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.
Approved by H. F. Smith, Traffic Manager.
Ex. List WTH. LKW. SDC. JFC. JNS.
File C. esw. Authority Pro. No. 31030-A.

906 Circular No. 1621-A Cancels Cir. No. 1620-A.

Amendment No. 5 to I. C. C. No. 946-A Amends I. C. C. No. 946-A.

Advance.

Supplement No. 6 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Re-shipping Articles Embraced in Classes C, D, & F and Sack Flour at Nashville and West Nashville, Tenn.

To N. C. & St. L. Local Stations West of Nashville, Tenn.:

I. Consignments of Grain and Grain Products, from and through Cairo, Ill., Belmont, Mo., Paducah, Ky., Hickman, Ky., and Mem-

phis, Tenn., via Nashville Chattanooga & St. Louis Railway destined to Nashville or West Nashville may be reshipped from Nashville or West Nashville, to points on N. C. & St. L. Ry. west of Nashville.

II. On such shipments a reduction of 50% will be made from the regular local tariff rate from Nashville or West Nashville, to destination, subject to provisions in paragraph- III and IV.

III. Provided that the aggregate of the rate into Nashville shall in no case be less than the rate on Grain or Grain Products, as the case may be from Paducah, Belmont, etc., (as indicated by expense bill), plus two cents per 100 pounds.

IV. This arrangement will not apply on grain shipped to Millers.

V. Shipments to be billed into and out of Nashville and West Nashville at published tariff rates and upon compliance with rules governing application of expense bills and verification of movement; Claim Agent will make settlement on above basis. (Corr. 2233.) (File 1831.)

Issued February 2nd, 1905. Effective February 15th, 1905.
By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.
Approved by H. F. Smith, Traffic Manager.
Ex. List WTH. LKW. JFC. JNS. SDC.
File 1831-C esw. Authority Pro. No. 31283-A.

907 Circular No. 1699-A Supersedes Cir. No. 1419-A.

Amendment No. 6 to I. C. C. No. 946-A Supersedes Supplement No. 2 to I. C. C. 946-A.

Reduction.

Supplement No. 7 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F and Sack Flour at Nashville and West Nashville, Tenn.

Switching on Grain and Articles Embraced in Classes C, D, & F and Sack Flour from Elevator.

On Grain and articles embraced in Classes C, D, & F, and sack flour, brought into Nashville by the Nashville, Chattanooga & St. Louis Railway, and stored in Elevator at West Nashville and moved from Elevator to local dealers or consumers at Nashville, proper, the Switching charge will be reduced one half upon evidence of movement into and out of elevator.

Issued May 25th, 1905. Effective June 2, 1905.
By Geo. R. Knox, General Freight Agent, Nashville, Tenn.
Approved by H. F. Smith, Traffic Manager.
Ex. List LKW. SDC. WTH. WLN.
File 924, 2119-N. CWM. Authority Pro. No. 32813-A.

908 Circular No. 1863-A Cancels Cir. No. 1621-A.

Amendment No. 7 to I. C. C. 946-A Cancels Amend. No. 5 to I. C. C. 946-A.

Supplement No. 8 to Nashville Reshipping Circular No. 1401-A, Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F and Sack Flour at Nashville and West Nashville, Tenn.

To N. C. & St. L. Local Stations West of Nashville, Tenn.:

1st. Consignments of Grain and Grain Products, from and through Cairo, Ill., Belmont, Mo., Paducah, Ky., Hickman, Ky. and Memphis, Tenn., via Nashville, Chattanooga & St. Louis Railway destined to Nashville or West Nashville may be reshipped from Nashville, or West Nashville to points on N. C. & St. L. Ry. west of Nashville.

2nd. On such shipments a reduction of 50% will be made from the regular local tariff rate from Nashville or West Nashville, to destination, subject to provisions in paragraphs 3 and 4.

3rd. Provided that the aggregate of the rate into Nashville shall in no case be less than the rate on Grain or Grain Products, as the case may be from Paducah, Belmont, etc., (as indicated by expense bill) plus two cents per 100 pounds. Unless this exceeds the combination of tariff rates into and out of Nashville in which case combination rate will be maximum.

4th. This arrangement will not apply on grain shipped to Millers.

5th. Shipments to be billed into and out of Nashville and West Nashville at published tariff rates and upon compliance with rules governing application of expense bills and verification of movement; Claim Agent will make settlement on above basis. (Corr. 2233.) (File 1831.)

Issued Sept. 20th, 1905. Effective Sept. 26th, 1905.

By Geo. R. Knox, General Freight Agent, Nashville, Tenn.

Approved by H. F. Smith, Traffic Manager.

Ex. List WTH. LKW. JFC. SDC.

File 1831-H. CWM. Authority Pro. No. 34561-A.

909 Circular No. 1891-A Amends Cir. No. 1401-A.

Amendment No. 8 to I. C. C. No. 946-A Amends I. C. C. No. 946-A.

Supplement No. 9 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Enumerated in Classes C, D, & F and Sack Flour at Nashville and West Nashville, Tenn.

This is to advise that hereafter Pensacola, Fla., will be excluded from list of points of destination to which N. C. & St. L. will join in protecting Cairo and East Cairo rates on articles enumerated in Classes C, D, & F, and Sack Flour, reshipped at Nashville to Pensacola, Fla.

Issued Oct. 24th, 1905. Effective Nov. 6th, 1905.
By Geo. R. Knox, General Freight Agent, Nashville, Tennessee.
Approved by H. F. Smith, Traffic Manager.
Ex. List LKW. ICC. SDC. Grain Dealers.
File 2058-C. CWM. Authority Pro. No. 34757-A.

910 Circular No. 2221-A Amends Circular No. 2081-A.

Amendment No. 9 to I. C. C. 946-A Amends I. C. C. No. 946-A.

Supplement No. 10 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F, and Sack Flour.

Switching Grain, Grain Products and Hay from Elevator.

On Grain, Grain Products and Hay transferred from Elevator to Warehouse of dealer or from one dealer to another on which terminal or transfer charges of one cent per 100 pounds has been assessed, such terminal charge will be refunded if reshipped via N. C. & St. L. Ry.

Issued Nov. 28, 1906. Effective Jan'y 1, 1907.
By Charles Barham, General Freight Agent, Nashville, Tennessee.
Approved by H. F. Smith, Vice-Pres. & Traffic Manager.
Ex. List LKW. ICC. SDC.
File 2119-S. CB. Authority Pro. 39910-A.

911 Circular No. 2258-A Amends Cir. No. 1401-A.

Amendment No. 10 to I. C. C. 946-A Amends I. C. C. 946-A.

Supplement No. 11 to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

Clause 12 Reads:
All expense bills become null and void for re-shipping purposes ninety days from date of issuance and are thereafter valueless for that purpose.
Change to read:
All expense bills become null and void for re-shipping purposes six months from date of issuance and are thereafter valueless for that purpose.
Issued Dec. 3, 1906. Effective at once.
By Charles Barham, General Freight Agent, Nashville, Tenn.
Approved by H. F. Smith, Vice-Pres. and Traffic Manager.
Ex. List LKW. FHD. DBC. SDC. WTH. WJN. Grain Dealers.
File E. C. B. Authority Pro. 40356-A.
S. E. M. V. R/A. No. 12069. Jan'y 1st. 1907.

912 Circular No. 2258-A. (Cor.) Amends Circular No. 1401-A.

Amendment No. 10 (Cor. to I. C. C. 946-A) Amends I. C. C. No. 946-A.

Supplement No. 11 (Cor.) to Nashville Reshipping Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Ry.

Clause 12 Reads:
Al expense bills become null and void for reshipping purposes ninety days from date of i-suance and are thereafter valueless for that purpose.
Change to Read:
All expense bills become null and void for reshipping purposes six*th* months from date of issuance and are thereafter valueless for that purpose.
Re-issued to correct effective date.
Issued December 3, 1906. Effective Jan'y 5th, 1907.
By Charles Barham, General Freight Agent, Nashville, Tennessee.
Approved by H. F. Smith, Vice-Pres. and Traffic Manager.
Ex. List LKW. FHD. DBC. SDC. WTH. WLN. Grain Dealers.
File E. CB. Authority Pro. 40356-A.
S. E. M. V. R/A 12069. Jan'y 1st. 1907.

913 NOVEMBER 9TH, 1907.

Nashville, Chattanooga & St. Louis Ry.

Amendment No. 12 to I. C. C. No. 946-A, not filed with the Interstate Commerce Commission.

914 Form 702.

Nashville, Chattanooga & St. Louis Ry.

Freight Traffic Department.

Circular No. 2688-A Cancels Circular No. 2149-A (Corrected).

Amendment No. 13 to I. C. C. 946-A Cancels Amendment No. 4 to I. C. C. No. 946-A, Dated Sept. 24, 1906.

Issued to Correct Record.

Supplement No. 14 to Nashville and West Nashville Reshipping Circular No. 1401-A.

Cancellation Notice.

Circular No. 2149-A (Cor.). Supplement No. 1 to Addenda "E" to Nashville, Reshipping Circular No. 1401-A, is hereby withdrawn and cancelled.

Addendas A, B, C, and D dated March 29th, 1907 are the only Addendas to the Nashville Reshipping Circular not in effect.

Issued Nov. 4th, 1907. Effective Dec. 8, 1907.

LKW, SDC, WTH, WLN, Grain Dealers, FHD.

Authority Pro. 43240-A. File E. CB.

By Charles Barham, General Freight Agent, Nashville, Tennessee.

Approved by H. F. Smith, Vice-Pres. and Traffic Manager.

915 Circular No. 2793-A.

Supplement No. 14 to I. C. C. 946-A.

Supplement No. 15 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Railway Traffic Department.

General Rules Applicable to Reshipping Articles Embraced in C, D, & F, and Sack Flour, at Nashville and West Nashville, Tenn.

On presentation by reshipped of certified expense bills (and under no other circumstances) bill of lading showing inspector's number may be issued for the reshipment by the Nashville line; except that no expense bills will be accepted unless the grain, milled products of

grain, or hay is reshipped by and in the name of the party to whom the shipment inbound is consigned. Bills of lading will not be issued on expense bills covering shipments into Nashville or West Nashville, Tenn., to parties other than the reshipper.

Issued March 4, 1908. Effective April 7, 1908.
By Charles Barham, General Freight Agent, Nashville, Tenn.
Approved by H. F. Smith, Traffic Manager.
Ex-List Station Tariff File No. 25.
File 1831-I. Pro. No. 44296.

916 Circular No. 2808-A Amends Circular 2793-A.

Supplement No. 15 to I. C. C. 946-A Cancels Supplement No. 14 to I. C. C. 946-A.

Supplement No. 16 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Railway.

Traffic Department.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F, and Sack Flour at Nashville and West Nashville, Tenn.

There shall be no conveyance of expense bills between receivers and
or shippers in Nashville on the commodities covered by these rules except where there has been an actual transfer by sale to cover the amount and the commodity represented by the expense bills so transferred. Said conveyance of expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by an authorized railroad agent.

Issued March 21, 1908. Effective May 7, 1908.
By Charles Barham, General Freight Agent, Nashville, Tenn.
Approved by H. F. Smith, Traffic Manager.
Ex-List Station Tariff File No. 25.
File 1831-I. Pro. No. 44296.

917 Circular No. 2841-A.

Amendment No. 16 to I. C. C. No. 946-A.

Supplement No. 17 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Railway.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, & F, and Sack Flour at Nashville and West Nashville, Tenn.

Amend Rule 4 by adding: "Screenings (Barley or Oat) may be accepted for reshipment on Oat Expense Bills."

Issued April 30, 1908. Effective June 1, 1908.

By Charles Barham, General Freight Agent, Nashville, Tenn.
Approved: H. F. Smith, Traffic Manager.
Ex-List CWS. FHD. DBS. SDC. CCJ. WTH. WLN. Grain Dealers, Station Tariff File No. 25.
File 1831-I. Pro. No. 44844-A.

18 Circular No. 2844-A.

Amendment No. 17 to I. C. C. 946-A.

Supplement No. 18 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Railway.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, and F, and Sack Flour at Nashville and West Nashville, Tenn.

Amend Rule 4 by adding: Oats may be accepted for reshipment on "Screening (Barley or Oat) Expense Bills."
Issued May 6, 1908. Effective June 8, 1908.
By Charles Barham, General Freight Agent, Nashville, Tenn.
Approved: H. F. Smith, Traffic Manager.
Ex-List CWS. FHD. DBC. SDC. CCJ. WTH. DMG. WLN. Grain Dealers. Station Tariff File No. 25.
File 1831-I. Pro. No. 44844-A.

19 Circular No. 2845-A.

Amendment No. 18 to I. C. C. 946-A.

Supplement No. 19 to Circular No. 1401-A of the Nashville, Chattanooga & St. Louis Railway.

General Rules Applicable to Reshipping Articles Embraced in Classes C, D, and F, and Sack Flour at Nashville and West Nashville, Tenn.

Effective on July 1, 1908, Circular No. 2841-A, Supplement 17 to Circular 1401-A, Amendment 16 to I. C. C. No. 946-A will be cancelled.
Issued May 6, 1908. Effective July 1, 1908.
By Charles Barham, General Freight Agent, Nashville, Tennessee.
Approved: H. F. Smith, Traffic Manager.
Ex-List CWC. FHD. DBC. SDC. CCJ. WTH. DMG. WLN. Grain Dealers Station Tariff File No. 25.
File 1831-I. Pro. No. 44844-A.

920

Circular No. 2864-A.

Supplement No. 19 to I. C. C. 946-A.

Supplement No. 20 to Circular No. 1401-A of the Nashville, Chatta
nooga & St. Louis Railway in Connection with Illinois Centra
R. R. FX3-104. Louisville & Nashville R. R. FX3-107.

General Rules Applicable to Reshipping Articles Embraced in — C
D, and F, and Sack Flour at Nashville, Tenn., and West Nashvill
Tenn.

The rules and regulations published in Circular 1401-A, I. C. C
946-A and supplements will apply on articles named brought in
Nashville, Tenn., or West Nashville, Tenn., via the Illinois Centr
R. R., and reshipped out over the N. C. & St. L. Ry.

Amend Rule 13 to read:

13. It will not be permissible to interchange between the Illino
Central R. R., and L. & N. R. R., and the N. C. & St. L. Ry., e
pense bills at Nashville and West Nashville on reshipped busine
when a portion of said expense bill has been used by either lin
An expense bill once presented to either line must be used up in r
shipments via that line.

Issued June 11, 1908. Effective July 14, 1908.

By Charles Barham, General Freight Agent, Nashville, Tennesse

Approved: H. F. Smith, Traffic Manager.

Ex-List DWL. CWS. FHD. DBC. SDC. CCJ. WTH. WLN. Gra
Dealers.

File No. 1813-I. Pro. No. 44296-A.

921

Exhibit Moore No. 6.

See Testimony, p. 20.

Supersedes Grain Arbitrary List No. 16 in full.

Nashville, Chattanooga & St. Louis Ry. Freight Traffic Departme

Compilation of Rates on Flour, Grain, Grain Products, Hay, F
der, and Straw, Governed by Southern Classification No. 35
Subsequent Issues.

Grain Arbitrary List No. 17 from Cairo, Brookport (from Beyon
Ill.; Belmont, Mo.; Paducah, Hickman, Ky., and Memph
Tenn., to Southeastern and Carolina Points.

Issued July 29, 1908. In Effect August 1, 1908.

By Chas. Barham, General Freight Agent, Nashville, Tennes

Approved: H. F. Smith, Traffic Manager.

Information regarding these rates may be obtained from
J. N. Steadwell, Assistant General Freight Agt., Nashville, Te
E. M. Smith, Assistant General Freight Agt., Nashville, Tenn.

Thos. G. McClellan, Gen. Western Agt., St. Louis, Mo.
J. H. Turner, Gen. Agt., Memphis, Tenn.
W. H. Wharton, Com'l Agt., Chicago, Ill.
J. H. Butler, Commercial Agent, Kansas City, Mo.

(Ex. List—See List.) (2500.)
File N. Pro. No. 45218-A.

922 *List of Points in Cairo Group.*

Rates from Cairo apply from Cairo, Brookport (from beyond,) Ill.; Belmont, Mo.; Paducah and Hickman, Ky.

Important Notice.

This list of Grain, Grain Products and Hay rates is compiled from the legal tariffs of the initial lines for the convenience and information of shippers.

It is not a legal tariff and the rates cannot therefore be guaranteed except as in strict accordance with the following publications, viz:

From Paducah, Hickman, Ky., Belmont, Mo., and Brookport (from Beyond), Ill.

To Carolina Points.

N. C. & St. L. Ry., Carolina Tariff L. I. C. C. No. 5 (Issued by M. P. Washburn, Agent.)

To Southeastern Points.

N. C. & St. L. Ry., Southeastern Tariff No. 1, I. C. C. No. 1 (Issued by W. P. Washburn, agent.)

N. C. & St. L. Ry., Southeastern Basis Book No. 1, I. C. C. No. 2, (Issued by M. P. Washburn, Agent.)

From Cairo, Ill.

To Carolina Points.

Illinois Central R. R. Carolina Tariff No. 1, I. C. C. No. 5 (Issued by M. P. Washburn, Agent.)

Mobile & Ohio R. R., Carolina Tariff No. 1, I. C. C. No. 5 (Issued by M. P. Washburn, Agent.)

To Southeastern Points.

Illinois Central R. R., and Mobile & Ohio R. R., Southeastern Tariff No. 1, I. C. C. No. A-1. (Issued by A. D. Hall, agent.)

Illinois Central R. R., Tariff A-12456, I. C. C. No. —.

Illinois Central R. R. Southeastern Basis Book No. 1, I. C. C. No. 2. (Issued by M. P. Washburn, Agent.)

Mobile & Ohio R. R., Tariff I. S. 7133, I. C. C. No. 4406.

Mobile & Ohio R. R. Southeastern Basis Book No. 1, I. C. C. No. 2. (Issued by M. P. Washburn, Agent.)

Every effort, however, will be made by the compilers to secure accuracy and conformity with the legal tariffs, rendering the publication serviceable and reliable for use by patrons.

923 EXHIBIT MOORE No. 7.

See Testimony, p. 54.

No Supplement can be issued to this Tariff.

I. C. C. No. A-10069 (Cancels I. C. C. No. A-9925).

Louisville & Nashville R. R. Co.

Office of General Freight Agent.

R. C. Circular No. 1836 (Cancels R. C. Circular No. 1721, May 1, 1908).

Reshipping and Milling in Transit at Nashville, Tenn., of Grain, Hay or Milled Products of Grain, Drawn from Louisville, Ky., Evansville, Ind., Henderson, Ky., Owensboro, Ky., Cairo, Ill., Paducah, Ky., Columbus, Ky., Hickman, Ky., Belmont, Mo., and Memphis, Tenn., for Points in Atlanta and Montgomery Territories and Reshipping at Nashville, Tenn., of Corn and Oats from St. Louis, Mo. (when from beyond), to Pensacola, Fla.

1. On shipments of grain, hay or milled products of grain brought into Nashville, Tenn., via the L. & N. R. R., from Louisville, Ky. (proper) and reshipped as grain, hay or milled products of grain to points in Atlanta or Montgomery territories hereinafter defined, this company will individually arrange, when the movement is out of Nashville over its rails, or jointly with the N. C. & St. L. Ry., when the movement out of Nashville is via the N. C. & St. L. Ry., for the protection of Louisville (proper), rates in effect at date of shipment of the grain, hay or milled products of grain from Nashville, Tenn.

2. On shipments of grain, hay or milled products of grain brought into Nashville, Tenn., via the L. & N. R. R., or via either the L. & N. R. R., or N. C. & St. L. Ry. from Memphis, Tenn., or from beyond, via Memphis, and reshipped as grain, hay or milled products of grain to points in Atlanta or Montgomery territories hereinafter defined, this company will individually arrange, when the movement is out of Nashville, over its rails, for the protection of Memphis (proper) rates to destination, or will jointly with the N. C. & St. L. Ry. arrange for the protection of Memphis (proper) rates, as the case may be, to destination, when the movement out of Nashville is in connection with the N. C. & St. L. Ry., in effect at date of reshipment from Nashville, Tenn., of the grain, hay or milled products of grain.

3. On shipments of grain, hay or milled products of grain brought into Nashville, Tenn., from beyond Louisville, Ky., via Louisville, and reshipped as grain, hay or milled products of grain to points in Atlanta and Montgomery territories, this Company will individually, when the movement out of Nashville is via its rails, and will jointly

with the N. C. & St. L. Ry., when the movement out of Nashville is via the N. C. & St. L. Ry. arrange for the protection south of Louisville, proportions of the same net rates applicable on business milled at or reshipped from Louisville. Said proportions to be those in effect at date of shipment of the grain, hay or milled products of grain from Nashville, Tenn.

4. On grain, hay or milled products of grain brought into Nashville, Tenn., from or through Evansville, Ind., Henderson, Ky., Owensboro, Ky., or from Cairo, Ill., Paducah, Ky., Columbus, Ky., Hickman, Ky., and Belmont, Mo., and reshipped as grain, hay or milled products of grain to points in Atlanta or Montgomery territories this Company will individually, when the movement out of Nashville is over its rails, and jointly with the N. C. & St. L. Ry. when the movement out of Nashville is over the N. C. & St. L. Ry., arrange for the protection south of Evansville, Henderson, Owensboro, Cairo, Paducah, Columbus, Hickman, or Belmont, of
924 the same through rate to final destination as in effect on the articles actually shipped from Nashville at the date of reshipment from Nashville, Tenn.

5. On shipments of corn and oats, in straight carloads, brought into Nashville, Tenn., via the L. & N. R. R. from St. Louis, Mo. (when from beyond), and reshipped as corn and oats to Pensacola, Fla., this Company will protect for the two hauls into and out of Nashville, Tenn., rate of 13 cents per 100 pounds, subject to carload minimum weight for each haul of 40,000 pounds on corn and 32,000 pounds on oats. (See Section 14.)

6. On reshipments of grain, hay or milled products of grain to points of destination as herein provided, reshippers shall surrender to the forwarding line an expense bill approved by the inspector of S. E. M. V. Association, showing points of origin at Ohio or Mississippi River Crossings or beyond, as specified in these rules.

7. On presentation by reshipper of such certified expense bill (and under no other circumstances), bill of lading, showing inspector's number, may be issued for the reshipment by the Nashville or West Nashville lines. (See Section 14.)

8. When bills of lading are issued as above, the agent issuing same shall endorse on the expense bill the bill of lading date, commodity, weight, point of destination and rate allowed.

9. Expense bills will not be honored for reshipment after six months from date thereof.

10. The weight reshipped shall not exceed the weight of the original expense bill.

11. Way bills shall show original point of shipment and S. E. M. V. Association Inspector's number.

12. The articles reshipped shall be the same as covered by the original expense bill, i. e., one kind of grain must not be reshipped on an expense bill covering another kind of grain, except that expense bills for barley or oat screenings will be accepted on reshipment of oats; grain must not be reshipped on an expense bill covering hay or grain products, and one kind of grain product must not be reshipped on an expense bill covering another kind of grain pro-

ducts, or on an expense bill covering a kind of grain other than that from which the product reshipped is manufactured.

13. For every hundred pounds of wheat shipped into Nashville, 72½ pounds of flour and 26 pounds of bran may be shipped out, but no more.

14. There shall be no trading of any expense bills (covering movement into Nashville, Tenn., between receivers and shippers, or millers, in Nashville, for the commodities covered by these rules, except where there has been an actual transfer by sale to cover the commodity and the amount represented by the expense bill so transferred. Said transfer of expense bills must be guaranteed by a certified copy of invoice, which must be subject to verification by authorized inspector. In no case will there be permitted the transfer of expense bills when the sale is of grain, hay or milled products of grain arriving at Nashville, Tenn., by river or by wagon.

925 15. These rules do not authorize reshipping or milling in transit at Nashville, Tenn., of grain or milled products of grain drawn from Mt. Vernon, Ind. (File 96514.)

16. For definition of Atlanta and Montgomery territories referred to herein, see Circular No. N. S. 2577, (I. C. C. No. A-9642), effective December 16, 1907, or subsequent issues thereof.

Issued June 3, 1908.

Effective July 6, 1908.

Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

File 314,000 sub pad 6 (Screenings).

File 93344. File 194,025 (Owensboro, Ky.,) Files 218,693, 259,865 (Pensacola), 280,232. P. 6., 350,023 (Reissue).

926 EXHIBIT COMPTON No. A-1.

See Testimony, p. 165.

I. C. C. No. A-10323
(Cancels I. C. C. No. A-10069).

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1927
(Cancels R. C. Circular No. 1836, July 6, 1908).

One printed sheet showing Reshipping and Milling in Transit at Nashville, Tenn., etc.

Issued August 31, 1908. Effective October 4, 1908.
Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

927 EXHIBIT COMPTON A-2.

I. C. C. No. A-10311,
Cancels I. C. C. No. A-10099.

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1921
Cancels R. C. Circular No. 1851 of July 20, 1908.

One printed sheet showing Reshipping of Hay, C. L. at Nashville, Tenn., drawn from or through Cincinnati, Ohio, to points in Atlanta or Montgomery Territories.

Issued August 29, 1908. Effective October 2, 1908.
Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

928 EXHIBIT COMPTON A-3.

I. C. C. No. A-10309,
Cancels I. C. C No. A-10100.

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1922
(Cancels R. C. Circular No. 1852 of August 6, 1908).

One printed sheet showing Reshipping and Milling in transit at Nashville, Tenn., of Grain, Hay or Milled Products of Grain drawn from or through Louisville, Ky., Evansville, Ind., Memphis, Tenn. or from Henderson, Ky. (Proper), and Owensboro, Ky. (Proper), to Carolina Territory.

Issued August 29, 1908. Effective October 2, 1908.
Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

929 EXHIBIT COMPTON A-4.

I. C. C. No. A-10313
(Cancels I. C. C. No. A-9913).

Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

R. C. Circular No. 1930
(Cancels R. C. Circular No. 1713, of May 1, 1908).

One sheet showing Reshipping and Milling In Transit at Nashville, Tenn., of Grain and Grain Products drawn from or through Cincinnati, O., Lexington, Winchester, Midway, Nicholasville, Paris, Shelbyville, and Versailles, Ky., when for points in Atlanta or Montgomery Territories.

Issued August 29, 1908. Effective October 2, 1908.
Issued by D. M. Goodwyn, General Freight Agent, Louisville, Ky.

930

EXHIBIT COMPTON #B-1.

See Testimony, p. 174.

Recapitulation of Movement, in Pounds, of Carload and Less Than Carload Shipments of Articles in Classes C, D, and F, from Points Indicated to Local Stations in the State of Georgia, on the Following Roads:

Atlanta, Birmingham & Atlantic R. R.
Atlantic Coast Line R. R.
Alabama Great Southern R. R.
Albany & Northern Ry.
Atlanta & West Point R. R.
Augusta Southern R. R.
Brinson Ry.
Central of Georgia Ry.
Charleston & Western Carolina Ry.
Douglas, Augusta & Gulf R. R.
Flint River & Northwestern R. R.
Gainesville Midland R. R.
Georgia Railroad.
Georgia Coast & Piedmont R. R.
Georgia, Florida & Alabama Ry.
Georgia Northern Ry.
Georgia Southern & Florida Ry.
Gulf Line Ry.
Hartwell Ry.
Louisville & Nashville R. R.
Louisville & Wadley R. R.
Macon & Birmingham Ry.
Macon, Dublin & Savannah R. R.
Milltown Air Line Ry.
Register & Glenville Ry.
Savannah & Statesboro Ry.
Seaboard Air Line Ry.
South Georgia Ry.
Southern Railway.
Sylvania & Girard R. R.
Tallulah Falls Ry.
Wadley Southern Ry.
Western & Atlantic R. R.
Wrightsville & Tennille R. R.

Statement Showing Comparison of the Movement of Carload and Les
Georgia Junction Points, viz., Atlanta, Columbus, Macon, Alban
on the Following Roads:

Atlanta, Birmingham & Atlantic R. R.
Atlantic Coast Line R. R.
Alabama Great Southern R. R.
Albany & Northern Ry.
Atlanta & West Point R. R.
Augusta Southern R. R.
Brinson Ry.
Central of Georgia Ry.
Charleston & Western Carolina Ry.
Douglas, Augusta & Gulf R. R.
Flint River & Northeastern R. R.

From—	Class C.		
	C. L.	L. C. L.	T
Nashville, Tenn:			
Weight	324,340	478,780	803,
Per cent	41.60	7.85	11
Georgia Junction points named in heading:			
Weight	455,374	5,618,931	6,074,
Per cent	58.40%	92.15	88
Total:			
Weight	779,714	6,097,711	6,877,
Per cent	100	100	

For the Month of August, 1905.

From—	Class "C"		Class "D"		Class "F"		Total "C & F,"	Total "C & F,"
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Nashville, Tenn. ...	324,340	478,780	2,724,445	473,340	.....	36,600	324,340	515,380
	40.38%	59.62%	85.19%	14.81%		100%	38.62%	61.38%
Atlanta, Ga.	307,054	1,555,242	200,559	1,163,072	.....	21,776	307,054	1,577,018
	16.5%	83.5%	14.7%	85.3%		100%	16.3%	83.7%
Columbus, Ga.	.....	416,224	.....	376,008	.....	6,000	.....	422,224
		100%		100%		100%		100%
Macon, Ga.	21,120	1,437,830	270,741	921,739	.....	4,610	21,120	1,442,440
	1.45%	98.55%	22.70%	77.30%		100%	1.44%	98.56%
Albany, Ga.	.....	130,246	.....	242,738	.....	400	.....	130,646
		100%		100%		100%		100%
Valdosta, Ga.	.....	57,453	.....	119,645	.....	4,888	.....	62,341
		100%		100%		100%		100%
Dublin, Ga.	.....	228,064	.....	67,820	.....	.....	.....	228,064
		100%		100%				100%
Rome, Ga.	60,000	157,206	.....	102,953	.....	.....	60,000	157,206
	27.63%	72.37%		100%			27.63%	72.37%
Athens, Ga.	67,200	1,623,695	.....	253,292	.....	4,800	67,200	1,628,495
	3.97%	96.03%		100%		100%	4%	96%
Montezuma, Ga.....	.....	12,971	.....	3,120	.....	.....	.....	12,971
		100%		100%				100%

(Here follows Exhibit Compton No. B-2, marked page 931.)

932 Pages L to LIII inclusive and from page 1 to 237 showing rates, etc., described on pages attached, which are the backs, or cover of this issue.

933 In Addition to Fast Freight Service on Grain, Grain Products and Hay,
The
Nashville, Chattanooga & St. Louis Ry.
Has Perfect System of
Through Package Cars
Between The
West and Northwest
and the
Southeast
By which less than car load freight is handled with the same dispatch as solid car loads.

934 N. C. & St. L.

From —— To ——.

Via —— Train —— Date.

Hurray!

The Nashville, Chattanooga & St. Louis Ry.

Makes a specialty of Grain, Grain Products, Hay.

It Offers Unexcelled Service.

When your car goes this way you are given its record; we are not ashamed of it.

(Here follow maps marked pages 935 and 936.)

937 EXHIBIT GALLAGHER No. 1.

See Testimony, p. 365.

10,000.
5,000.

Postal Card showing picture of Tow Boat.
"I. N. Flesher" with barge attached. The reverse side contains the following:

OCT. 20, 1908.

"Capt. Shephard Green, Nashville, Tenn.:

This is the new boat. She has 4 knees on head also; 2 search lights as you spok- of. I am on my way down 40 miles below Louisville River very low if water does not play out. Will try and get home. You will hear from me soon as I get home.

I. N. FLESHER.

938 SHANNON EXHIBIT No. 1.

See Testimony, p. 407.

Synopsis of the Information Contained in the Annual Report of the Chief — Engineers of the United States Army for the Year 1905 with Respect to the Cumberland River.

The Cumberland River rises in eastern Kentucky on the western slope of the Cumberland Mountains flows in a tortuous course of about 688 miles through eastern Kentucky, middle Tennessee and western Kentucky, and discharges into the Ohio River near Smithland, Ky. From Burnside, Ky., the head of steamboat navigation to Smithland, Ky., the distance is 518 miles by river, 203 miles being in the State of Kentucky and 315 miles in the State of Tennessee. The distance below Nashville is 193 miles.

From 1830 to 1840 the legislatures of Tennessee and Kentucky made several appropriations for the improvement of the navigation of the Cumberland River but little benefit to the general condition of the river seems to have been accomplished. The Cumberland Navigation Company was incorporated by the state of Tennessee in 1846 for improving the "navigation of the Cumberland river below the town of Nashville by means of a system of locks and dams" but nothing tangible was done to carry out the proposed improvement.

In its original condition this section of the River was considerably obstructed by rocky ledges, conglomerate, gravel and sand bars,
939 snags and other surface obstructions, on account of which navigation was rendered very uncertain.

From July 17, 1832, to July 7, 1838, Congress made five appropriations for improving the Cumberland River in Tennessee and Kentucky, aggregating $155,00, $20,000 of which was to be expended below Nashville and $135,000 on the river generally, but the records show that all of the appropriations for the above period were expended below Nashville.

Between 1838 and 1871 no appropriations for this river were made. The original project (open channel work) which provided specifically for operations on this section, was adopted by the river

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Between 1838 and 1871 no appropriations for this river were made. The original project (open channel work) which provided specifically for operations on this section, was adopted by the river

and harbor act of March 3, 1871, based on project submitted January, 20, 1871. The work proposed was as follows:

The excavate the bars and rock ledges to get additional depth of water, to contract the water ways in places to get the requisite depth, to remove snags and bowlders from the main channel, and to restrain tributary streams in well-determined channels at their junctions with the river.

The increase the depth of water at the shoals in Kentucky chute at the junction of the Cumberland with the Ohio River, a Board of Engineer Officers in 1888 recommended the construction of a dike near Smithland, Ky. at an estimated cost of $129,600. The river and harbor act of September 19, 1890, allotted $30,000 from the appropriation for improving Cumberland River below Nashville to be expended in improving the mouth of the river as recommended. Appropriations aggregating $305,000 were made and expended under the above project.

940 The expenditures under the old project have resulted in lengthening the season of navigation by giving an increased depth at low water combined with greater security in the passage of obstructions.

The present project for improving the Cumberland River below Nashville was adopted July 13, 1892 by river and harbor act of that date. It contemplates the extension of the lock and dam system of the upper river over a considerable portion of the river below Nashville by the construction of 7 locks and dams, commencing at or near Harpeth shoals (Lock A) and ending at Big Sandy Shoals (lock G); the locks to be 52 feet wide and 280 feet long, with lifts varying from 8½ to 11½ feet and aggregating some 70 feet. The project also includes the improvement of the Kentucky chute, at the mouth of the river, as recommended by the Board of Engineer Officers in 1888, the necessary channel work below Lock G, and the removal of the surface obstructions, snags, logs, etc., below Nashville. The total estimated cost of the entire improvement is $1,964,500.

Under this project, appropriations aggregating $440,000 have been made and $402,841.58 has been expended (to 1905) of which $16,550.28 was applied to maintenance.

The expenditures have resulted in the periodical removal of snags and other surface obstructions from the navigable channel, in the protection of the bank of a part of Cumberland Island in Kentucky chute at mouth of river, and the practical completion

941 of Lock and Dam A, whereby a 6 foot navigation has been afforded all year round for a distance of 38 miles above the lock. The season of profitable navigation from the Ohio River to Nashville has been prolonged from Forty-five to ninety days depending on the state of water.

The Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over three feet from six to eight months, and for boats drawing 16 inches and less the whole year. Navigation is practically closed for several months each year during low water. As a general rule, when the state is below 2½ feet navigation is closed; between 2½ feet and 5 feet it is uncertain, and above five feet good.

The *good* of maintenance of the open-river channel in its present condition is estimated at $5,000 per annum.

The reported tonnage for calendar year 1904 was about 275,371 tons having an estimated value of about $3,034,600; passengers carried 7,550. The tonnage consisted mainly of railroad ties with considerable items of other timber products, farm products, sand and gravel and general merchandise.

942 EXHIBIT COMPTON C.

C. B. C.

See Testimony, p. 206.

Exhibit No. C.

Synopsis of the Information Contained in the Annual Report of the Chief Engineers of the United States Army for the Year 1905, *with Respect to the Cumberland River.*

The Cumberland River rises in eastern Kentucky on the western slope of the Cumberland Mountain flows in a tortuous course of about 688 miles through eastern Kentucky, middle Tennessee and western Kentucky, and discharges into the Ohio River near Smithland, Ky. From Burnside, Ky., the head of steamboat navigation to Smithland, Ky., the distance is 518 miles by river, 203 miles being in the State of Kentucky and 315 miles in the State of Tennessee. The distance below Nashville is 193 miles.

From 1830 to 1840 the legislatures of Tennessee and Kentucky made several appropriations for the improvement of the navigation of the Cumberland River but little benefit to the general condition of the river seems to have been accomplished. The Cumberland Navigation Company was incorporated by the state of Tennessee in 1843 for improving the "navigation of the Cumberland river below the town of Nashville by means of a system of locks and dams" but nothing tangible was done to carry out the proposed improvement.

In its original condition this section of the River was considerably obstructed by rocky ledges, conglomorate, gravel and sand bars, snags and other surface obstructions, on account of which navigation was rendered very uncertain.

From July 17, 1832 to July 7, 1838 Congress made five appropriations for improving the Cumberland River in Tennessee and Kentucky, aggregating $155,000, $20,000 of which was to be expended below Nashville and $135,000 on the river generally, but the records show that all the appropriations for the above period were expended below Nashville.

943 Between 1838 and 1871 no appropriations for this river were made. The original project (open channel work) which provided specifically for operations on this section, was adopted by the river and harbor act of March 3, 1871, based on project submitted January 20, 1871. The work proposed was as follows:

The excavate the bars and rock ledges to get additional depth of water, to contract the water ways in places to get the requisite depth, to remove snags and bowlders from the main channel, and to restrain tributary streams in well-determined channels at their junctions with the river.

The increase the depth of water at the shoals in Kentucky chute at the junction of the Cumberland with the Ohio River, a Board of Engineer Officers in 1888 recommended the construction of a dike near Smithland, Ky., at an estimated cost of $129,600. The river and harbor act of September 19, 1890, allotted $30,000 from the appropriation for improving Cumberland River below Nashville to be expended in improving the mouth of the River as recommended. Appropriations aggregating $305,000 were made and expended under the above project.

The expenditures under the old project have resulted in lengthening the season of navigation by giving an increased depth at low water combined with greater security in the passage of obstructions.

The present project for improving the Cumberland River below Nashville was adopted July 13, 1892 by river and harbor act of that date. It contemplates the extension of the lock and dam system of the upper river over a considerable portion of the river below Nashville by the construction of 7 locks and dams, commencing at or near Harneth Shoals (Lock A) and ending at Big Sandy
944 Shoals (Lock G); the locks to be 52 feet wide and 280 feet long, with lifts varying from 8½ to 11½ feet and aggregating some 70 feet. The project also includes the improvement of the Kentucky chute, at the mouth of the river, as recommended by the Board of Engineer Officers in 1888, the necessary channel work below Lock G, and the removal of surface obstructions, snags, logs, etc. below Nashville. The total estimated cost of the entire improvement is $1,964,500.

Under this project, appropriations aggregating $440,000 have been made and $402,841.58 has been expended (to 1905) of which $16,550.28 was applied to maintenance.

These expenditures have resulted in the periodical removal of snags and other surface obstructions from the navigable channel, in the protection of the bank of a part of Cumberland Island, in Kentucky chute at mouth of river, and the practical completion of Lock and Dam A, whereby a 6 foot navigation has been afforded all year round for a distance of 38 miles above the lock. The season of profitable navigation from the Ohio River to Nashville has been prolonged from forty five to ninety days depending on the state of water.

The Cumberland river below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over three feet from six to eight months, and for boats drawing 16 inches and less the whole year. Navigation is practically closed for several months each year during low water.
945 As a general rule, when the state is below 2½ feet navigation is closed; between 2½ feet and 5 feet it is uncertain, and above 5 feet good.

The good of maintenance of the open-river channel in its present condition is estimated at $5,000 per annum.

The reported tonnage for calendar year 1904 was about 275,371 tons having an estimated value of about $3,034,600; passengers carried 7,550. The tonnage consisted mainly of railroad ties with considerable items of other timber products, farm products, sand and gravel and general merchandise.

"Exhibit No" to Petition

ANNUAL REPORT OF THE CHIEF OF ENGINEERS, 1[illegible]

APPENDIX B B

47

FILED
UNITED STATES
OCT 18 1911
COMMERCE COURT
GEO. W. SNYDER, Clerk.

REPORT UPON THE IMPROVEMENT OF RIVERS AND HARBORS IN THE NASHVILLE, TENN., DISTRICT

WM. W. HARTS
MAJOR, CORPS OF ENGINEERS, U. S. A.
IN CHARGE

"Exhibit No 1 - Mrs Gallagher" page 700.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

APPENDIX B B

REPORT UPON THE IMPROVEMENT OF RIVERS AND HARBORS IN THE NASHVILLE, TENN., DISTRICT

WM. W. HARTS
MAJOR, CORPS OF ENGINEERS, U. S. A.
IN CHARGE

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

head of navigation on the South Fork, but in recent years navigation appears to have been limited to the lower portion of this stream. It is probable that rafting and logging can be carried on to a distance of 25 miles above Dyersburg.

In their original condition the main stream and its branches, the North Fork and South Fork, were greatly obstructed by snags and drift. The original project may be said to have been adopted by the river and harbor act of August 2, 1882, and was based on a report of an examination of South Fork, dated December 16, 1880. This project was subsequently modified by extension to include the North Fork and main stream until appropriations aggregating $25,000 were made and expended. The operations proposed were open-channel work, by which it was sought to maintain a satisfactory channel all the year round. This project was set aside in view of the fact that the result aimed at could not be accomplished by this method.

The present project for maintenance, based on the provisions of the act of March 3, 1899, provided for the removal of surface obstructions from the Forked Deer River and its navigable branches (North and South forks), at an estimated annual cost of $2,000. In 1903 the annual expenditure recommended for maintenance of both the Obion and Forked Deer rivers was reduced from $4,500 to $2,250. (See Annual Report for 1904, p. 2351.) Under this project appropriations and allotments aggregating $12,600 have been made, of which $11,766.37 has been expended to June 30, 1909. The expenditures have resulted in temporary improvements to the channel, lessening the dangers to navigation at medium and higher stages. The navigability of the Forked Deer River depends largely upon the stage of water in the Mississippi. Navigation is not practicable at low stages.

No work was done during the past fiscal year. The funds expended were applied to the maintenance of the floating plant.

For the calendar year ending December 31, 1908, the reported commerce on this stream amounted to 16,165 tons having an estimated value of about $35,150, and consisting almost wholly of timber products. Passengers carried, 300.

For references to sundry examinations and surveys of the Obion and Forked Deer rivers, see the Report of the Chief of Engineers for 1908, page 553. For the report of the survey of the South Fork of the Forked Deer River dated January 22, 1908, see House Document No. 945, Sixtieth Congress, first session.

The effect of the improvement on freight rates is not believed to be important and can not readily be ascertained.

This river has been combined with the Obion in the work of improvement, and they have ordinarily been considered together in making appropriations of funds.

The district officer expresses the opinion, for reasons stated in his report on Obion River, that further appropriations under this project are not warranted.

July 1, 1908, balance unexpended	$985.17
June 30, 1909, amount expended during fiscal year, for maintenance of improvement	151.54
July 1, 1909, balance unexpended	833.63
July 1, 1909, outstanding liabilities	11.50
July 1, 1909, balance available	$822.13

CONSOLIDATED.

July 1, 1908, balance unexpended	$2,198.38
June 30, 1909, amount expended during fiscal year, for maintenance of improvement	360.37
July 1, 1909, balance unexpended	1,838.01
July 1, 1909, outstanding liabilities	24.50
July 1, 1909, balance available	1,813.51

(See Appendix B B 1.)

2. Cumberland River, Tennessee and Kentucky.—The Cumberland River rises in eastern Kentucky, on the western slope of the Cumberland Mountains, flows in a tortuous course of about 688 miles through eastern Kentucky, middle Tennessee, and western Kentucky, and discharges into the Ohio River near Smithland, Ky. From Burnside, Ky., the head of steamboat navigation, to Smithland, Ky., the distance is 518 miles by the river, 203 miles being in the State of Kentucky and 315 miles in the State of Tennessee.

(a) Below Nashville (193 miles).—From 1830 to 1840 the legislatures of Tennessee and Kentucky made several appropriations for the improvement of the navigation of the Cumberland River, but little benefit to the general condition of the river seems to have been accomplished. The Cumberland Navigation Company was incorporated by the State of Tennessee in 1836 for improving the "navigation of the Cumberland River below the town of Nashville by means of a system of locks and dams," but nothing effective was done to carry out the proposed improvement.

In its original condition this section of the river was considerably obstructed by rocky ledges, conglomerate, gravel, and sand bars, snags, and other surface obstructions, on account of which navigation was rendered very uncertain.

From July 17, 1832, to July 7, 1838, Congress made five appropriations for improving the Cumberland River, Tennessee and Kentucky, aggregating $155,000, $20,000 of which was to be expended below Nashville and $135,000 on the river generally, but all the appropriations for the above period were expended below Nashville, to improve the worst localities.

Between 1838 and 1871 no appropriations for this river were made. The original project (open-channel work), which provided specifically for operations on this section, was adopted by the river and harbor act of March 3, 1871, based on project submitted January 20, 1871. The work proposed was as follows: To excavate the bars and rock ledges in order to get an additional depth of water; to contract the waterways in places in order to get the requisite depth; to remove snags and bowlders from the main channel; and to restrain tributary streams in well-determined channels at their junction with the river.

To increase the depth of water at the shoals in Kentucky Chute at the junction of the Cumberland with the Ohio River, a Board of Engineer officers in 1888 recommended the construction of a dike near Smithland, Ky., at an estimated cost of $129,600. The river and harbor act of September 19, 1890, allotted $30,000 from the appropriation for improving Cumberland River below Nashville, to be expended in improving the mouth of the river, as recommended.

Appropriations aggregating $305,000 were made and expended, thus completing the above project. The expenditures under the old project have resulted in lengthening the season of navigation by giving an increased depth at low water combined with greater security in the passage of obstructions.

The present project for improving the Cumberland River below Nashville was adopted July 13, 1892, by the river and harbor act of that date. It contemplates the extension of the lock and dam system of the upper river over a considerable portion of the river below Nashville by the construction of 7 locks and dams, commencing at or near Harpeth shoal (Lock A) and ending at Big Eddy shoal (Lock G); the locks to be 52 feet wide and 280 feet long, with lifts varying from 8½ to 11½ feet and aggregating some 70 feet. The project also includes the improvement of the Kentucky Chute, at the mouth of the river, as recommended by the Board of Engineer officers in 1888, the necessary channel work below Lock G, and the removal of surface obstructions, snags, logs, etc., below Nashville. The total estimated cost of the entire improvement is $1,964,500. (Annual Report of the Chief of Engineers for 1894, p. 1866.)

Under this project appropriations and allotments aggregating $450,000, which, with receipts from sales and other receipts, $986.30, makes a total of $450,986.30.

The total expenditures under this project to June 30, 1909, amount to $440,745.61, of which sum about $20,897.60 have been applied to maintenance.

These expenditures have resulted in the periodical removal of snags and other surface obstructions from the navigable channel, the protection of the bank of a part of Cumberland Island in Kentucky Chute at the mouth of the river, and the completion and placing in operation of Lock A, November 26, 1904, whereby 6-foot navigation has been afforded all year round for a distance of 38.8 miles above the lock. The season of profitable navigation from the Ohio River to Nashville has been prolonged by forty-five to ninety days, depending on the stage of water, making it now average eight months annually. Lock A is 41.4 miles below Nashville.

The Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over 3 feet, from six to eight months, and for boats drawing 16 inches or less, the whole year. General navigation, however, is practically closed for several months each year during low water. As a general rule, when the stage is below 2½ feet, navigation is closed; between 2½ feet and 5 feet, it is uncertain, and above 5 feet, good. A table is given on page 390 of the Annual Report of the Chief of Engineers for 1902, showing the stages at Burnside, Carthage, Nashville, and Clarksville for the years 1898–1902.

No work of improvement was carried on during the past fiscal year.

The funds expended were applied to the cost of the survey for locks and dams authorized by the act of March 2, 1907.

For references to detailed reports and maps and to the report of the Board of Engineers for Rivers and Harbors concerning the further improvement of the Cumberland River see the Annual Report of the Chief of Engineers for 1908, page 555.

A preliminary report of the survey ordered by the act of March 2, 1907, is printed in House Document No. 758, Sixtieth Congress,

first session. The final report is printed in House Document No. 1481, Sixtieth Congress, second session.

In these reports the district officer recommends the further improvement of the Cumberland River below Nashville by the construction of the necessary locks and dams. This recommendation was concurred in by the division engineer, Board of Engineers for Rivers and Harbors, and the Chief of Engineers.

Attention is invited to the recommendation of the district officer in the appendix to this report that the necessary funds for the commencement of the work be appropriated at the earliest date practicable. This recommendation is concurred in.

The reported commerce for the calendar year 1908 was 259,734 tons, having an estimated value of about $4,621,197; passengers carried, 33,000. The tonnage consisted principally of timber and farm products, and general merchandise.

It is reported that the Tennessee Central Railroad, which parallels the Cumberland River from Nashville to Clarksville, had rates in force before the completion of Lock and Dam A of from 18 to 26 cents per 100 pounds, and since this lock was put in operation these rates have been reduced above the lock to from 6 cents to 12 cents per 100 pounds.

The quantity of grain handled by the local steamboats has increased considerably since the completion of Lock A and a new line of steamboats, the Tyner Line, has been operating during the boating season.

It appears from reliable information that the cost of transporting grain by river to Nashville is about 8 cents per 100 pounds from points below Evansville on the Ohio River, while it is 15 cents per 100 pounds by way of river to Henderson or Uniontown, Ky., and thence by rail to Nashville, or a saving of about 7 cents per 100 pounds by all river transportation. Within the past year freight rates by rail have advanced 12½ to 20 per cent on every class of merchandise going south out of Nashville, while into Nashville it appears that the tariff has not been advanced. There is little doubt that the competition offered by the Cumberland River, even in its present condition, is the cause of the favorable rates into Nashville.

The amount estimated as a profitable expenditure in the fiscal year ending June 30, 1911, will be applied to necessary maintenance. The funds are needed for maintaining the river in a navigable condition. No estimate is submitted for further work on the old or existing project for improvement by locks and dams pending action by Congress on the new plan for slack water improvement referred to above.

July 1, 1908, balance unexpended	$8,731.44
Cash allowance received from Underwood Typewriter Company	12.25
Amount allotted from appropriation by river and harbor act approved March 3, 1909	10,000.00
	18,743.69
June 30, 1909, amount expended during fiscal year, for survey	8,503.00
July 1, 1909, balance unexpended	10,240.69
July 1, 1909, outstanding liabilities	6.95
July 1, 1909, balance available	10,233.74

Amount (estimated) required for completion of existing project..... $1,549,818.81

Amount that can be profitably expended in fiscal year ending June 30, 1911, for maintenance of improvement, exclusive of the balance unexpended July 1, 1909..... 10,000.00
Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.

(*b*) *Above Nashville (357 miles).*—This section extends from Nashville to the mouth of Rockcastle River. In its original condition it was considerably obstructed by rock reefs, ledges, snags, etc., which greatly impeded navigation between Nashville and Burnside (about 325 miles), while above Burnside the Smith shoals formed a serious obstruction to navigation at practically all stages.

The original scheme of improvement above Nashville, as modified and extended, contemplated open-channel work from Nashville, Tenn., to Cumberland Ford (Pineville, Ky.), 497 miles, at an estimated cost of $374,764, and was based on projects submitted January 20, 1871, and February 8, 1872.

The first appropriation, specifically applicable to the Cumberland River above Nashville, was made by the act of August 14, 1876.

This open-channel scheme of improvement, or old project, resulted in giving increased depths at several of the principal obstructions, thus securing a longer and safer period of navigation. Under this project and its modifications appropriations aggregating $346,000 were made and expended.

The project for the canalization of the Cumberland River above Nashville, based on reports of an examination and survey in 1882 and 1883, was adopted by the river and harbor act of August 5, 1886.

This scheme of improvement provided for the construction of 22 locks and dams below Burnside, Ky., and 6 locks and dams at Smith shoals, above Burnside, the intention being to provide a complete system of lockage from Nashville, Tenn., to Rockcastle River, so as to afford a channel depth of 6 feet, the locks to be 52 feet wide and 280 feet long, with lifts varying from 10 to 12 feet, at an estimated cost of $8,500,000.

On February 16, 1905, the Board of Engineers for Rivers and Harbors reported on the project of canalization as follows:

The Board is of the opinion that the regulation of the river and * * * the completion of Locks and Dams 3, 4, 5, 6, and 7 above Nashville, so as to carry the improvement of the river from its mouth to Carthage, Tenn., is worthy of being continued by the United States, but that the construction of the locks and dams proposed between Carthage and Burnside, except No. 21, now under contract, is not at present justified by the commerce involved.

The river and harbor act of March 2, 1907, adopted the modified project for completing the improvement in accordance with this report by providing for the completion of Locks and Dams Nos. 3, 4, 5, 6, and 7 at an additional expenditure of $550,000, thus reducing the cost of the project as modified to $2,769,000, increased in the report for 1908, page 1690, to $2,854,000. The act appropriated $150,000 and authorized continuing contracts in the further sum of $400,000 for completing the project. The entire amount so authorized has now been appropriated.

For the statement concerning the annulment of the contract for constructing Lock and Dam No. 21 see the Report of the Chief of Engineers for 1908, page 1689.

The district officer, in the appendix to this report, recommends that an additional sum of $85,000 be appropriated to finish the work at Lock 21, as experience shows that it will be impossible to build the dam and do the necessary work of bank protection and paving within the present estimate of cost. His recommendation is concurred in.

Attention is invited to the district officer's further recommendation in this connection, however, that no such appropriation be made for the completion of this work unless the town of Burnside, which is in the vicinity of the proposed lock and will derive the greatest benefit from the improvement, furnish adequate terminal facilities by reserving for all time, by appropriate legislative action, a portion of its water front, and devote it exclusively to the accommodation of river commerce upon such terms as will be reasonable and just to the public.

Under the project of canalization appropriations and allotments aggregating $2,779,000 have been made; $493.15 have been received from recoveries, sales, etc., making a total of $2,779,493.15. Of this amount about $42,036.95 is chargeable to maintenance, leaving $2,737,456.20 applicable to works of improvement. The total expenditures under this project to June 30, 1909, amount to $2,378,110.47, of which sum about $31,564.15 was applied to maintenance.

These expenditures have resulted in an improved channel way by the periodical removal of snags and other surface obstructions; the completion and operation of Lock and Dam No. 1 (2.5 miles below Nashville); Lock and Dam No. 2 (9 miles above Nashville); and Lock and Dam No. 3 (26 miles above Nashville); the completion of the masonry required for locks and abutments of dams Nos. 4, 5, 6, and 7 (44.7, 72, 89, and 106.6 miles, respectively) above Nashville; the purchase of sites for abutment at Lock No. 8 (125.2 miles above Nashville); and for Lock and Abutment No. 22 (320.2 miles above Nashville); the selection of sites for the locks of the Smith shoals system; the letting and partial execution of the contracts for the construction and erection of the gates for Locks 3 to 7, and for Lock 21; the partial construction of Lock No. 21; the purchase and delivery of the lumber for Dam No. 5; and contingencies pertaining to the entire improvement.

The Cumberland River is navigable usually from Nashville to Burnside, Ky., 325 miles, for steamboats drawing not more than 3 feet from four to six months of each year, and for boats of greater draft from two to three months. The fall is 223 feet, or about 8 inches per mile.

From Nashville to Caney Fork River (Carthage, 116 miles) the river is navigable for steamboats of 2½ feet draft from six to eight months, and for those of greater draft four or five months. Steamboats of light draft can ascend to Burkesville, 236 miles above Nashville, for from five to seven months and larger boats four or five months.

The head of navigation is Burnside, Ky., for steamers and other craft. This section is considered navigable for rafting and logging for about 35 miles above Burnside.

Lock No. 1 was placed in operation November 26, 1904. The completion of this lock affords a good harbor at Nashville, where a number of new boats and barges were put in commission as a result of this improvement.

Lock No. 2 was put in operation on October 9, 1907, and Lock No. 3 was placed in operation on October 15, 1908. The completion of these three locks gives a 6-foot navigation the year round for a distance of about 47 miles above Nashville.

The early completion of the work at Locks Nos. 4, 5, 6, and 7, where the more expensive masonry parts have already been built, is regarded of great importance, as this is necessary to make the improvement available and will provide a permanent channel for navigation from Nashville to Carthage and the Caney Fork River. When these locks are in operation the effect of the project on freight rates will be more fully apparent.

The expenditures during the past fiscal year were applied to the completion of placing Lock No. 3 in operation; erecting the lock gates under contract at Locks Nos. 4 and 5; partial construction of Dam No. 5; purchase and delivery of the materials preparatory to the construction of the guard walls at Locks Nos. 6 and 7; quarrying stone for dams; letting of the contract for the delivery of the timber for Dam No. 4; construction of two lock houses at Lock No. 5; construction of floating plant and temporary buildings for shops and quarters at Locks Nos. 6 and 7; construction of Lock No. 21 and contingencies pertaining to the entire improvement.

The amount expended for maintenance during the past fiscal year was applied to the purchase of material for a snag boat.

It is proposed to apply the amount estimated as a profitable expenditure in the fiscal year 1911 as follows: Eighty-five thousand dollars to the work of placing Lock No. 21 in operation, and $10,000 to maintenance of improvement. The funds are needed to make the improvement available for the needs of commerce and for maintaining the channel of the river in a navigable condition.

The commerce on the Cumberland River above Nashville for the calendar year 1908, as nearly as could be ascertained, aggregated 246,260 tons, having an estimated value of about $8,745,280; passengers carried, 8,635. The tonnage consisted mainly of timber and farm products and general merchandise.

For references to surveys see page 695, Annual Report of Chief of Engineers, 1906.

July 1, 1908, balance unexpended		$399,649.79
Amount allotted from appropriation by river and harbor act approved March 3, 1909		10,000.00
Amount appropriated by sundry civil act approved March 4, 1909		250,000.00
Cash allowance received from Underwood Typewriter Co.		17.25
		659,667.04
June 30, 1909, amount expended during fiscal year:		
For works of improvement	$257,469.88	
For maintenance of improvement	214.28	
		257,684.16
July 1, 1909, balance unexpended		401,982.88
July 1, 1909, outstanding liabilities		25,153.34
July 1, 1909, balance available		376,829.54

July 1, 1909, amount covered by uncompleted contracts		$43,488.50
Amount (estimated) required for completion of existing project		85,000.00
Amount that can be profitably expended in fiscal year ending June 30, 1911, exclusive of the balance unexpended July 1, 1909:		
For works of improvement	[a]$85,000.00	
For maintenance of improvement	10,000.00	
		95,000.00
Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.		

(See Appendix B B 2.)

3. Operating and care of locks and dams on Cumberland River.—Four locks are now in operation, Lock A, the first of the series below Nashville, and Locks 1, 2, and 3 of the series above Nashville.

They have an available length of 280 feet, a clear width of 52 feet between walls, and a depth of 6½ feet on miter sills at low water, except at lower miter sill of Lock A, where the present low-water depth is only 1 foot. This depth will be increased to 6½ feet by the construction of the next lock below.

The first allotment from the indefinite appropriation of July 5, 1884, for the operation and care of these locks was made June 26, 1905.

During the calendar year 1908 the traffic past Lock A was about 104,743.9 tons; past Lock No. 1 about 102,651 tons; past Lock No. 2 about 187,553.4 tons; past Lock No. 3 about 3,658.2 tons since it was placed in operation in October, 1908.

A special allotment of $9,000 was made for the purchase of a pump boat for pumping out the lock pits when they fill up with material. This vessel will be constructed at Muscle Shoals Canal, and is expected to be placed in commission early next fall.

The funds expended were applied to the repair of Dam A with concrete, and to the expenses of operating and care of lock gates, buildings, and grounds.

The amount expended to June 30, 1909, was $60,977.41, of which $31,801.58 were expended during the past fiscal year.

(See Appendix B B 3.)

4. Caney Fork River, Tennessee.—This stream lies in the central part of Tennessee. After a course of about 200 miles, wholly in the State, it empties into the Cumberland River at Carthage, Tenn., about 116 miles above Nashville. It is the largest tributary of the Cumberland River.

In its original condition the principal difficulties were found to be rock reefs, gravel and sand bars, and a crooked and shallow channel greatly impeded by surface obstructions.

No work was done by the United States prior to that begun under the present project. The present project, adopted June 14, 1880, is based on the report of 1879, and an extension of the project is based on the report of 1886. It provides for improving the 92 miles of river from Franks Ferry, the head of navigation, to its mouth, Carthage, Tenn., by removing the surface obstructions, building riprap

[a] An appropriation of this amount is recommended by the district officer and the Chief of Engineers, subject to certain important conditions set forth on pages 589 of this report.

dams and training walls, so as to obtain sufficient water for safe navigation during boating season for steamboats drawing not more than 3 feet, at an estimated cost of $45,228. (Annual Report of the Chief of Engineers for 1887, p. 1767.)

Rafting and logging does not appear to be practicable above Franks Ferry.

Under the project referred to, appropriations aggregating $28,000 have been made and $12.25 received from other sources, and $27,839.83 expended to the close of the fiscal year ending June 30, 1909.

From August, 1880, when the first work was done, to August, 1891, when the last work was done, $25,000 was expended. The results were an improvement of the channel at a 3-foot stage from Franks Ferry to the mouth of the river. The improvement, however, was not permanent and can not be made so under the present project. The additional work required is therefore practically for maintenance.

No appropriations were made from 1890 to 1905, and no work was done for upward of seventeen years.

The funds expended during the past fiscal year were applied to clearing the channel of the river of surface obstructions and care of plant.

In view of the meager benefits resulting, it is not believed that future appropriations are warranted under this project.

The effect of the improvement on freight rates is not believed to be important and can not be readily ascertained.

The commerce on the Caney Fork River for the calendar year 1908, as nearly as could be ascertained, aggregated 16,480 tons, having an estimated value of $79,013.

July 1, 1908, balance unexpended	$1,533.69	
Cash allowance received from the Underwood Typewriter Company	12.25	
		1,545.94
June 30, 1909, amount expended during fiscal year, for maintenance of improvement		1,373.52
July 1, 1909, balance unexpended		172.42

(See Appendix B B 4.)

SURVEY OF CUMBERLAND RIVER, TENNESSEE AND KENTUCKY, MADE IN COMPLIANCE WITH RIVER AND HARBOR ACT APPROVED MARCH 2, 1907.

Report dated January 18, 1909, on a survey of *Cumberland River, Tennessee and Kentucky, below Nashville*, with a view to the construction of locks and dams in that portion of the river heretofore surveyed in which no locks and dams have been constructed, required by the river and harbor act of March 2, 1907, was duly submitted by the district officer. It was reviewed by the Board of Engineers for Rivers and Harbors, pursuant to law, and was transmitted to Congress and printed in House Document No. 1481, Sixtieth Congress, second session. A plan of improvement is presented which has in view the construction of three more locks and dams, (D, E, and F) to complete the system of six in all, the estimated cost of which is $1,905,688.80.

APPENDIX B B.

IMPROVEMENT OF RIVERS AND HARBORS IN THE NASHVILLE, TENNESSEE, DISTRICT

REPORT OF MAJ. WM. W. HARTS, CORPS OF ENGINEERS, OFFICER IN CHARGE, FOR THE FISCAL YEAR ENDING JUNE 30, 1909

IMPROVEMENTS.

1. Obion and Forked Deer rivers, Tennessee.
2. Cumberland River, Tennessee and Kentucky.
3. Operating and care of locks and dams on Cumberland River, Tennessee.
4. Caney Fork River, Tennessee.

ENGINEER OFFICE, UNITED STATES ARMY,
Nashville, Tenn., July 21, 1909.

SIR: I have the honor to transmit herewith the annual report upon the river improvements in my charge relating to the Nashville, Tenn., district for the fiscal year ending June 30, 1909.

Very respectfully,

WM. W. HARTS,
Major, Corps of Engineers.

The CHIEF OF ENGINEERS, U. S. ARMY.

B B 1.

IMPROVEMENT OF OBION AND FORKED DEER RIVERS, TENNESSEE.

(A) OBION RIVER.

No active work was done owing to lack of sufficient funds. The sum of $208.83 was expended during the past fiscal year, which was applied to care of plant.

In view of the cost of the extensive repairs to the floating plant and snagging outfit now found necessary to further carry on this improvement, and in view of the meager benefits resulting from this work in the past, it is not believed that further appropriations under this project are warranted.

About nine-tenths of the commerce consists of timber products floated out at high water, for which the works of improvement are not of much benefit.

1675

APPROPRIATIONS.

July 13, 1892	$7,500
August 18, 1894	7,000
June 3, 1896	6,000
March 3, 1899	2,500
June 13, 1902 (allotment dated July 1, 1902)	2,500
March 3, 1905 (allotment dated April 15, 1905)	1,500
March 2, 1907 (allotment dated March 27, 1907)	1,500
Total	27,500

COMMERCIAL STATISTICS.

[Fiscal year ending December 31, 1908.]

	Tons.
Logs	8,150
Lumber	4
Sand	150
Grain	87
Other farm products	72
Live stock, hides	200
Live stock, meat	18
General merchandise	3
Total	8,684
Estimated value	$54,412
Passengers carried	105

List of steamboats (etc.) [illegible] during the fiscal year ending June 30, 1908.

	Registered dimensions.			Net tonnage.
	Length.	Breadth.	Depth.	
	Ft.	*Ft.*	*Ft.*	
Chotek	100.0	17.8	3.1	31
Ione	90.4	15.1	2.6	21
[illegible]	92.3	16.4	3.8	47
[illegible]	94.0	21.3	3.0	51
[illegible]	97.7	28.0	4.3	97
Lutes	87.6	12.6	2.6	53

[illegible]

(61) FORKED DEER RIVER.

No work was done during the past fiscal year owing to lack of sufficient funds. The sum of $151.51 was expended which was applied to care of floating plant.

In view of the cost of the extensive repairs to the floating plant and snagging outfit now found necessary to further carry on this improvement, and in view of the meager benefits resulting from this work in the past, it is not believed that further appropriations under this project are warranted.

About nine tenths of the commerce consists of timber products floated out at high water, for which the works of improvement are not of much benefit.

APPROPRIATIONS.

Old project (pp. 315-316, H. Doc. No. 421, 57th Cong., 2d sess.)		$25,000
Present project, by act of		
June 3, 1896	$1,000	
June 3, 1896, for North Fork from Dycusburg to Mississippi River	5,000	
March 3, 1899	2,000	
June 13, 1902 (allotment, dated July 1, 1902)	1,609	
March 3, 1905 (allotment, dated Apr. 15, 1905)	1,000	
March 2, 1907 (allotment, dated Mar. 27, 1907)	1,000	
		12,609
Grand total		37,609

COMMERCIAL STATISTICS.

(From Annual Statistical Circular, 1908.)

	Tons.
Logs	5,625
Lumber	4
Railroad ties	10,000
Shingles	1
Staves	150
Sand	87
Grain	72
Other farm products	263
Live stock, large	18
Live stock, small	5
General merchandise	
Total	16,165
Estimated value	$25,140
Passengers carried	200

Comparative statement of traffic on Ohio and Tradewater Rivers for eight years.

Calendar year.	Tons.
[illegible]	26,258
1901	22,000
1902	26,375
1903	24,849
1904	

List of steamboats and other craft plying upon Tradewater River, calendar year 1908.

Name.	Registered dimensions.			Net tonnage.
	Length.	Breadth.	Depth.	
	Feet.	*Feet.*	*Feet.*	
Clyde[a]	95.1	12.6	3.1	31
John[a]	50.4	11.3	2.6	5
J. C. Allen	104.0	32.4	2.8	57
Jay Patton	66.6	25.3	3.4	63
Kit Carson	126.0	38.0	2.3	96
Lula[a]	57.8	12.6	2.0	8

[a] Gasoline.

B B 2.

IMPROVEMENT OF CUMBERLAND RIVER, TENNESSEE AND KENTUCKY.

(A) BELOW NASHVILLE, TENN. (193 MILES).

During the fiscal year ending June 30, 1909, $8,503 were expended, all of which was applied to the work of surveying sites for new locks and dams. The final report of the survey has been submitted to which reference is made on page 587 of the current summary.

No snagging was done during the past fiscal year owing to a lack of available funds. Authority has been obtained to construct a new snag boat at a cost of about $7,000, which will be constructed and placed in commission as soon as practicable. This vessel will be operated on the Cumberland River above and below Nashville.

A biennial appropriation of at least $10,000 should be made for clearing this section of surface obstructions, the sums heretofore allotted being inadequate for the effective work of maintenance required.

It is very important that provision be made as early as practicable for purchasing the necessary lock sites and for commencing work on Locks B and C. For this purpose $390,000 should be appropriated.

Estimate of additional funds required.

Amount that can be profitably expended in fiscal year ending June 30, 1911, for maintenance of improvement exclusive of the balance unexpended July 1, 1909	$10,000.00

Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.

APPROPRIATIONS.

Old project (p. 539 H. Doc. No. 421, 57th Cong. 2d sess.):		
Cumberland River, Tennessee and Kentucky (all expended below Nashville)		$155,000.00
Cumberland River below Nashville		305,000.00
New project for locks and dams, acts of—		
July 13, 1892	$40,000.00	
August 18, 1894	30,000.00	
June 3, 1896	80,000.00	
March 3, 1899	100,000.00	
Amended act of June 13, 1902	180,000.00	
March 3, 1905	10,000.00	
March 3, 1909 [illegible] abatement dated [illegible], 1909	10,000.00	
		450,000.00
Total appropriated		910,000.00
Received from other sources		586.30
Grand total		910,586.30

COMMERCIAL STATISTICS.

[Open river.]

Cumberland River below Nashville, Tenn., from January 1 to December 31, 1908.

	Tons.		Tons.
Logs	6,158	Iron, manufactured	190
Lumber	2,309	Sand and gravel	8,520
Railroad ties	210,090	Lime and cement	88
Heading	63	Mussel shells	1,500
Handles	349	General merchandise	6,300
Tobacco	2,502		
Grain	19,631	Total	259,734
Other farm products	1,187		
Live stock, large	357	Estimated value	$4,621,197
Live stock, small	1,099	Passengers carried	33,000

[For commerce passing Lock A, see commercial statistics, "Operating and care," etc.]

Comparative statement of traffic for eight years.

Calendar year.	Tons.	Calendar year.	Tons.
1901	235,357	1905	253,430
1902	243,731	1906	225,899
1903	297,458	1907	300,810
1904	276,371	1908	259,734

List of steamboats (stern-wheels) plying on the Cumberland River below Nashville, Tenn., calendar year 1908.

Name	Registered dimensions.			Net tonnage.
	Length.	Breadth.	Depth.	
	Feet.	*Feet.*	*Feet.*	
Blue Spot	115.6	23.8	3.7	87
Bob Dudley	160.0	29.0	5.8	159
Castalia	110.0	26.2	3.7	90
C. M. Pate	111.6	22.4	4.0	82
Chancy Lamb	130.0	28.8	4.5	194
Charles Turner	104.0	20.3	3.0	73
Electra	170.0	35.0	5.2	273
H. W. Buttorff	160.0	30.0	4.1	160
Henrietta	130.0	24.0	4.1	153
Henry Harley	160.0	29.0	5.2	162
Hosmer	95.6	18.4	3.6	52
I. N. Hook	109.9	19.4	3.0	55
Inverness	129.0	21.0	4.8	122
J. B. Richardson	165.0	29.0	4.0	194
Jim T. Duffy, jr	120.0	28.0	3.8	146
J. S	175.0	33.0	5.5	236
Little Bena	45.0	11.0	1.5	5
Little Tipo	50.0	16.0	2.5	11
Lyda	122.0	24.0	2.4	80
Mackie	129.0	20.6	3.5	77
Mary A. Anderson	100.0	27.0	3.7	74
Mary M. Michael	143.0	26.3	4.4	234
Martha H. Hennen	112.0	24.0	4.8	77
Margaret	100.0	22.0	3.0	100
Nellie	120.0	28.0	4.0	192
R. Dunbar	160.0	28.0	6.4	158
Russell Lord	160.0	30.0	5.0	158
Scotia	100.5	13.4	3.0	51
Sycamore	103.6	20.3	5.0	72
Vincennes	98.5	20.0	3.3	51
Herbert	152.8	19.5	3.0	63
Katherine	125.0	28.0	4.0	146
Pavonia	120.0	26.0	4.0	132
Robert Rhea	149.8	30.4	4.4	182

• Gasoline.

(B) ABOVE NASHVILLE, TENN. (357 MILES).

The amount expended under the existing project during the fiscal year ending June 30, 1909, was $257,684.16, the disbursements being distributed as follows:

Lock and Dam No. 2		$1.88
Locks and Dams Nos. 3, 4, 5, 6, and 7:		
Lock No. 3	$48,093.21	
Lock No. 4	40,651.78	
Lock No. 5	33,857.77	
Lock No. 6	24,384.06	
Lock No. 7	23,437.16	
		170,423.98
Lock and Dam No. 21		87,044.02
Maintenance		214.28
Total		257,684.16

The following is an account of the work done:

At Lock 3 (26 miles above Nashville).—The contract with J. K. Joice, of Chicago, Ill., for the delivery of lumber for Dams Nos. 3 and 5 was closed and terminated in August, 1908. The dam was completed and the lock placed in operation October 15, 1908. The details of the work were as follows: The masonry for the lock gates and maneuvering appliances was prepared at a cost of $1,655.19; 6,643 cubic yards of sand, gravel, etc., were dredged for lower approach and cofferdams at the lower and upper ends of the lock at a cost of 14 cents per cubic yard; a concrete guide wall containing 907 cubic yards, was built at a cost of $7.24 per cubic yard; the dam was built at a total cost of $25,574.20, consisting of 3,745 cubic yards gravel and sand excavated at a cost of 7.34 cents per cubic yard; 429,121 feet b. m. lumber at $28.51 per M feet b. m. (paid for in previous fiscal year). This lumber was framed and placed at a cost of $6.17 per M feet b. m.; the cost of plates, nails, boat spikes, and drift bolts was about $2.92 for each thousand feet b. m. of lumber. Three thousand five hundred and sixty-three cubic yards of stone, solid measurement, were quarried, at a cost of $1.20 for quarrying, 5 cents for royalty, 40 cents for towing, and 65 cents for placing in dam, making a total of $2.31 per cubic yard for stone placed in dam; 5,320 cubic yards of sand and gravel were dredged and used to back up the dam at a cost of 8.34 cents per cubic yard. Two lock houses were built, at an average cost of $2,968.98 each, and a blacksmith shop was constructed at a cost of $266.37. The following floating plant was constructed: One derrick boat hull, 30 by 80 by 4½ feet, at a cost of $3,598.60; one decked barge, 22 by 100 by 5 feet, at a cost of $2,332.16; two ferryboats, at an aggregate cost of $337.01.

Lock No. 4 (44.7 miles above Nashville).—The force was employed in the work preparatory to placing this lock in operation. Proposals were solicited by newspaper advertisement for 700,000 feet b. m. yellow pine lumber for constructing the dam at this lock. Fifteen proposals were received. The contract was awarded to W. C. Rodgers, of Hattiesburg, Miss., the lowest bidder, at $25.75 per thousand feet b. m. Articles of agreement were entered into May 12, 1909. The contract time expired June 30, 1909, but was waived and a reasonable time thereafter granted to finish the work. The details of the work were as follows: The masonry for the lock gates and maneuvering

appliances was prepared at a cost of about $1,600; the erection of the lock gates under contract was completed; 95 cubic yards rock from channel below the lock were excavated at a cost of about $3.15 per cubic yard; 673 cubic yards of sand and gravel were excavated and removed from site of the dam at a cost of 30 cents per cubic yard; 350 cubic yards deposit were removed from culverts at upper end of the lock at a cost of 40 cents per cubic yard; 5,040 cubic yards of sand, gravel, and mud were dredged from the lower approach at a cost of 13 cents per cubic yard; 183 cubic yards of foundation masonry for lock houses were built at a cost of $4.60 per cubic yard; 6,550 cubic yards stone, solid measurement, were quarried and delivered for dam filling and bank protection at a cost of $1.40 per cubic yard; trestle was built and a derrick erected for unloading supplies. With the exception of the dam, the lock is finished.

Lock No. 5 (72 miles above Nashville).—The force was engaged in work preparatory to putting the lock into operation. The following are details of the work: Fifty feet of cofferdam at lower end of the lock were built at a cost of $4.47 per linear foot; 225 linear feet of cofferdam at upper end of the lock were built at a cost of $4.06 per linear foot; a guard wall, containing 846 cubic yards of concrete, was built at a cost of $8.10 per cubic yard; about one-third of the dam was built, consisting of 6,958 cubic yards of sand and gravel excavation at 31 cents per cubic yard; 222,732 feet b. m. lumber at $29.84 per M feet b. m., the framing and placing of the same at $7.16 per M feet b. m.; 4,520 cubic yards of stone placed in dam at 51 cents per cubic yard; 300 cubic yards of backing to the dam at 29 cents per cubic yard. The lock gates were erected under contract. Two thousand seven hundred and fifty cubic yards stone, solid measurement, were quarried for dam filling at a cost of $1 per cubic yard. This lock is finished with the exception of about two-thirds of the dam. The high water since January 1, 1909, has prevented any work being done in the river.

Lock No. 6 (89.6 miles above Nashville).—The force was engaged in the work preparatory to placing the lock in operation. Work was resumed December 20, 1908. The continued high water since that date has prevented any work being done in the river. An office building, with basement fitted up for storing cement, storehouse, and blacksmith shop, were erected at a cost of $1,986.06, $678.53, and $269.23, respectively; laborers' quarters and kitchen were removed from Lock No. 4 and rebuilt at a cost of $549.87; 1,500 barrels of cement for guard wall, etc., were purchased, unloaded, and stored. The preparation of masonry for lock gates and maneuvering appliances was partially completed at a cost of $1,088.61. A small gasoline boat was purchased at a cost of $800 for use in ferrying materials across the river. Trestle and derrick for unloading material were erected and a tram track built. The masonry of the lock walls and abutment of the dam is completed.

Lock No. 7 (107 miles above Nashville).—The force was engaged on the work preparatory to placing the lock in operation. Work was resumed on February 17, 1909. Temporary quarters were built, consisting of an office building at a cost of $1,725.89; storehouse at a cost of $364.24; and a blacksmith shop at a cost of $222.24. The following buildings were removed and erected at this lock: Laborers'

quarters from Lock 2 at a cost of $271.24; kitchen from Lock A at a cost of $369.50; and a cement shed from Lock 5 at a cost of $298.18. A trestle and derrick for unloading material were erected; tram tracks were built; 1,500 barrels of cement for guard wall, etc., were purchased, unloaded, and stored; 240 cubic yards sand and 525 cubic yards of gravel were purchased and unloaded; partially prepared masonry for reception of lock gates and maneuvering appliances at a cost of $310.82; placed machinery and house on new derrick boat. High water has continuously prevailed and work in consequence could not be prosecuted. Since January 1, 1909, water has not been low enough to prepare the masonry for installing the filling valves either here or at Lock 6. Such has not been the case before within the past eighteen years. The masonry of the lock walls and abutment of the dam is completed.

At Muscle Shoals Canal three decked barges, 100 by 22 by 5 feet, and two dump scows, 20 by 80 by 5 feet, were built for the Cumberland River lock and dam work. The barges cost about $2,650 each and the scows about $2,800 each.

The steamers *Cumberland*, *Henry*, and *John* were engaged during the past fiscal year in towing supplies and material for the entire improvement.

Lock No. 21 (294¼ miles above Nashville).—This work was formerly under contract. For an account of the annulment of the contract, see page 1689, Report of the Chief of Engineers, 1908. The force was engaged principally in the work of constructing the masonry of the lock, the guide wall, and the lock keeper's house; about 60 per cent of the lock walls and about 57 per cent of the guide wall is completed. The lock master's house was practically completed at a cost of $4,333.54. Minor work consisted in overhauling machinery and plant, extending tram tracks, unloading and storing cement, erecting machinery, and opening quarries. A small towing steamer, the *Tom Ray*, was purchased for $1,000 and gave satisfactory service. The past fiscal year $9,713.46 were expended in additions to the plant and $5,447.50 in repairs. The quantities of the work accomplished were as follows: *Lock*—embankment, 689 cubic yards; grading bank, 2,117.7 cubic yards; concrete, 4,022.2 cubic yards; riprap, hand placed, 931.8 cubic yards; stone filling, 248.4 cubic yards; rock excavation, 218.3 cubic yards; earth excavation, 4,113 cubic yards; irons placed, 16,778 pounds. *Guide wall*—earth excavation, 1,135 cubic yards; rock excavation, 147.5 cubic yards; concrete, 1,153.9 cubic yards; embankment, 913.5 cubic yards. *Abutment*—earth excavation, 111.6 cubic yards.

An additional appropriation of $85,000 will be necessary to finish Lock and Dam No. 21. The details of this estimate are given in the Annual Report of the Chief of Engineers for 1908, pages 1689-1690.

The completion of Lock and Dam No. 21 will back the water up beyond the junction of the two forks, which will add about 4 feet additional depth to what is now the ruling low-water stage at Burnside. This will make a harbor at this town very useful for the summer anchorage of boats when the remainder of the river is too low for navigation, besides affording excellent opportunities for the transportation of freight from the Queen and Crescent Railroad, which crosses the river at this point.

This rail line is reached from the river by an inclined track of standard guage connecting with a siding along the north fork now used or controlled by the railroad company. A line of steamboats, known as the Burnside and Burkesville Transportation Company, now controlling all the privately owned steamboats in this part of the river, has entered into an exclusive agreement with the railroad company, as shown by the records of this office, by the terms of which no freight can be handled between the railroad and river by any other line unless by the consent of this local company. All or nearly all of the water front at Burnside is held in private or corporate ownership, so at present there is no way for independent steamboats to land at Burnside except with the permission of the Burnside and Burkesville Transportation Company, nor can any freight be shipped by rail to or from the river except on its terms. It thus appears that the construction of Lock 21 is in the nature of fostering a monopoly or exclusive arrangement which prevents fair competition. This is not in the public interest. It is therefore recommended that the appropriation of the $85,000 of additional funds necessary for the completion of this lock and dam when made be expressly coupled with a contingent requirement that before its expenditure an ample, suitable, public, free landing place be provided, without expense to the United States, within a reasonable distance of the town of Burnside, with ample and suitable right of way to the streets and roads of the town, to be dedicated to the public use for all time. The moderate cost of such a landing place is such a small measure of cooperation in the improvement of this river when compared with the large expenditures of the Government that it should be promptly met by this town in the interests of the public.

No snagging was done during the past fiscal year owing to a lack of available funds.

A biennial appropriation of at least $10,000 should be made for clearing the Cumberland River above Nashville of surface obstructions, the sums heretofore allotted being inadequate for effective work of this character.

Estimate of additional funds required.

Amount that can be properly expended in fiscal year ending June 30, 1911, exclusive of the balance unexpended July 1, 1909:

For works of improvement	$85,000
For maintenance of improvement	10,000
	$95,000

Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.

APPROPRIATIONS.

Old project (p. 339, H. Doc. 421, 57th Cong., 2d sess.)		$316,000.0
New project for a system of locks and dams from Nashville, Tenn., to head of Smith Shoals, mouth of Rockcastle River, Kentucky:		
Act of—		
August 5, 1886	375,000.00	
August 11, 1888	200,000.00	
September 19, 1890	250,000.00	
July 13, 1892	250,000.00	
August 18, 1894	200,000.00	
June 3, 1896	50,000.00	
June 4, 1897 (sundry civil act)	350,000.00	
July 1, 1898 (sundry civil act)	250,000.00	
March 3, 1899	100,000.00	
Amended act of June 13, 1902	200,000.00	
Act of—		
March 3, 1905	124,000.00	
June 30, 1906 (sundry civil act)	120,000.00	
March 2, 1907	150,000.00	
March 4, 1907 (sundry civil act)	30,000.00	
May 27, 1908 (sundry civil act)	200,000.00	
March 3, 1909 (maintenance), allotment dated April 1, 1909	10,000.00	
March 4, 1909 (sundry civil act)	250,000.00	
		2,779,000
Total appropriated		3,125,000
Received from other sources		403
Grand total		3,125,403

CONTRACTS IN FORCE.

IMPROVING CUMBERLAND RIVER ABOVE NASHVILLE, TENN.

[Formal contracts.]

1. For construction, delivery, and erection of two steel lock gates, filling valves, e
   for Lock No. 21, at $17,900:
   Contractor: Port Huron Shipbuilding Company, of Port Huron, Mich.
   Date of contract: March 9, 1906.
   Date of approval: March 16, 1906.
   Date of beginning work: March, 1906.
   Date of expiration: Forty available working days after completion of mas
   necessary for erection.
2. For construction, delivery, and erection of two steel lock gates, filling valves, e
   for each of Locks 3 to 7, at $85,100:
   Contractor: Penn Bridge Company, of Beaver Falls, Pa.
   Date of contract: July 18, 1907.
   Date of approval: July 31, 1907.
   Date of beginning work: July, 1907.
   Date of expiration: October 31, 1909.
3. For furnishing and delivering 1,258,695 feet b. m. yellow pine lumber for Da
   and 5, at $25.25 per thousand feet b. m.:
   Contractor: J. K. Joice, of Chicago, Ill.
   Date of contract: December 28, 1907.
   Date of approval: January 7, 1908.
   Date of beginning work: March, 1908.
   Date of expiration: March 15, 1908, for lumber for Dam 5, and May 1, 1
   for lumber for Dam 3. (Time limit waived March 12, 1908.)
4. For furnishing and delivering 690,164 feet b. m. yellow pine lumber for Da
   at $28.50 per thousand feet b. m.:
   Contractor: W. C. Rodgers, of Hattiesburg, Miss.
   Date of contract: May 12, 1909.
   Date of approval: June 4, 1909.
   Date of beginning work: May, 1909.
   Date of expiration: June 30, 1909. (Time limit waived June 28, 1909.)

COMMERCIAL STATISTICS

[CUMBERLAND RIVER.]

Cumberland River above Nashville, Tenn., from January 1 to December 31, 1908.

	Tons.		Tons.
Coal	44,440	Live stock, large	466
Lumber	20,791	Live stock, small	2,334
Railroad ties	43,777	Iron, manufactured	988
Poles, posts, and piling	5,058	Sand and gravel	59,032
Heading	250	Lime and cement	621
Spokes	10	General merchandise	17,827
Staves	38,284		
Tobacco	2,530	Total	246,260
Corn	6,102	Estimated value	$8,745,280
Other farm products	3,193	Passengers carried	8,635
Handles	618		

[For commerce passing Locks 1, 2, and 3 see commercial statistics, "Operating and ..." etc.]

Comparative statement of traffic for eight years.

Calendar year.	Tons.	Calendar year.	Tons.
1901	207,211	1905	262,807
1902	192,270	1906	254,351
1903	206,142	1907	241,371
1904	242,312	1908	246,260

List of steamboats (stern-wheel) plying on the Cumberland River above Nashville, Tenn., calendar year 1908.

Name.	Registered dimensions.			Net tonnage.
	Length.	Breadth.	Depth.	
	Feet.	*Feet.*	*Feet.*	
Albany	104.0	23.0	3.5	82
Ben Hurst	40.0	8.0	1.8	
Bob Dudley	103.0	24.0	3.8	150
Bon Spot	104.0	24.0	3.7	87
C. M. Pate	115.0	22.4	4.0	82
Catalpa	105.0	24.2	3.7	80
Clancy Lands	110.0	27.8	4.5	194
Charles Turner	74.0	20.7	3.9	73
Cumberland	50.0	12.0	1.6	11
Dick Clyde	85.8	17.4	3.9	76
Electra	100.0	25.0	3.7	273
E. W. Bottorff	100.0	24.0	4.1	140
Henrietta	100.0	24.0	4.3	154
Henry Hartley	118.0	29.0	3.2	192
Hubert	62.8	19.5	3.0	63
Hunter	75.0	18.4	3.0	82
Inverness	124.0	21.0	4.8	191
J. B. Richardson	126.0	30.0	4.0	191
J. S.	175.0	35.0	5.0	256
Jas. T. Duffy, jr	110.0	26.0	3.8	146
Little Ben a	45.0	11.0	1.5	5
Little Tip a	61.0	16.0	2.5	11
Lula	122.0	25.0	3.4	80
Lucie	90.0	20.6	3.0	77
Lucile	50.0	10.0	1.5	6
New Franklin	130.0	26.0	4.0	192
Paragon	110.0	25.4	3.4	178
R. Dunbar	105.0	25.0	4.0	97
Roberta	80.0	20.0	3.0	72
Shoshone	104.7	24.4	3.9	91
T. J. Hayden	85.0	17.0	3.7	73
Mary Anderson	115.0	26.3	4.4	224
Mary M. Maxwell	112.0	25.0	4.8	77
Martha H. Brandon	102.0	23.3	3.0	130
Margaret	120.0	26.0	4.0	146
Katherine	65.0	18.0	3.5	9
Tom Ray	142.5	30.4	4.4	182
Robert Rhea				

a Gasoline.

BB 3.

OPERATING AND CARE OF LOCKS AND DAMS ON CUMBERLAND RI

Besides operating the lock and the ordinary work of caring for buildings and the grounds the following work was done:

Lock No. 1.—One thousand two hundred and fifty-five cubic y were dredged from lock and upper approach at a cost of 12 cents cubic yard.

Lock No. 2.—Three thousand six hundred cubic yards were dre from lock and upper approach at a cost of 13 cents per cubic y 9,130 cubic yards of sand and gravel were dredged and placed a the dam for backing it at a cost of 12 cents per cubic yard.

Lock A.—Three thousand seven hundred and fifty-seven c yards of concrete were used in repairing the lower slope of the entirely across the river at a cost of $4.65 per cubic yard; 900 c yards of stone, solid measurement, were placed above the dam cost of 35 cents per cubic yard; 920 cubic yards of gravel were vated by drag scraper from the lower approach at a cost of 22 per cubic yard.

ALLOTMENTS.

June 26, 1905	$14,0
July 18, 1906	6,0
August 13, 1907	28,8
August 1, 1908	14,0
September 9, 1908 (pump boat)	3,0

Summary of expenditures for operating and care of locks and dams on Cumberland for fiscal year ending June 30, 1909.

Services	$3
Repairs and dredging	22,8
Supplies	1
Subsistence	
New hull for derrick boat	1,7
Office expenses and contingencies	2,0
Total	31,8

COMMERCIAL STATISTICS.

Statement of traffic passing locks on Cumberland River during calendar year 1

	Lock 1	Lock 2.	Lock 3a	Lo
Total lockages.....number	771	1,923	66	
Craft:				
Packets.....do	139	99	4	
Towboats.....do	241	83		
Government boats.....do	35	362	24	
Barges.....do	187	417	12	
Sand dredges.....do	89	89	5	
Small craft.....do	358	231	8	
Rafts.....do	229	642	32	

a Opened to traffic, October 15, 1908.

Statement of traffic passing locks on Cumberland River during calendar year 1908—Cont'd.

		Lock 1.	Lock 2.	Lock 3.	Lock 4.
Cargo:					
Logs	Tons	18,158.8	83,542.6	525.0	365.6
Lumber	do	282.7	10,736.8		144.1
Railroad ties	do	40,160.8	40,104.6	1,173.9	77,028.2
Poles, telegraph and telephone	do		42,490.1	880.0	172.4
Hoop poles	do	155.1	500.5	10.1	109.6
Headings	do	40.8			81.3
Staves	do	707.5	91.7		
Handles and slats	do	216.5	397.5		13.7
Spokes	do	98.0			
Wagon felloes	do		8.5		
Wood	do	210.0			40.0
Tobacco	do	70.0	2,013.3	195.3	118.2
Grain	do	18,645.3	3,122.4	20.8	19,340.5
Other farm products	do	701.0	977.0	12.0	497.0
Fertilizer	do		27.0		
Coal	do		178.0		129.9
Iron, manufactured	do		189.1		2.0
Sand and gravel	do	11,137.5	12,253.9	657.5	
Bricks	do	13.7			
Stone	do	75.0			
Lime and cement	do	88.9	229.5		15.8
Explosives	do				5.0
Live stock, large	do	374.5	241.2	25.8	315.0
Live stock, small	do	200.8	1,123.7	68.1	328.0
General merchandise	do	5,818.4	2,352.0	231.0	6,011.0
Total		102,651.0	187,583.4	2,778.2	104,743.9
Passengers		5,101	8,341	53	3,095

B B 4.

IMPROVEMENT OF CANEY FORK RIVER, TENNESSEE.

The snag boat which was at work 15 miles below Franks Ferry on this stream at the close of the fiscal year 1908 continued work downstream, reaching the mouth of the Caney Fork August 31, 1908, the snagging outfit then being floated down the Cumberland River and delivered to the United States overseer at Lock No. 5. The sum of $1,373.52 was expended during the past fiscal year. The following are the details of the work done:

Snags removed, large		409
Snags removed, small		1,134
Leaning trees cut, over 8 inches		2,870
Leaning trees cut, under 8 inches		11,559
Trees trimmed		2,466
Trees deadened		2,724
Rock reefs, bowlders, and fish stakes removed	cubic yards	274
Distance covered and left clear	miles	76

In view of the meager benefits resulting from this work in the past further appropriations under this project are not recommended.

APPROPRIATIONS.

June 14, 1880	$6,000.00	March 2, 1907	$3,000.00
March 3, 1881	4,000.00		
August 2, 1882	4,500.00	Total	28,000.00
July 5, 1884	3,000.00	Received from other sources	12.25
August 5, 1886	3,000.00		
August 11, 1888	2,500.00		28,012.25
September 19, 1890	3,000.00		

COMMERCIAL STATISTICS.

[From January 1 to December 31, 1888.]

	Tons.
	16,180
	1,000
	16,180
Total	

Estimated value $28,080

The only boat reported as plying on the Cape Fear River during the calendar year was the gasoline boat *Starlight*, 36 feet long, 11 feet wide, and 2 feet deep, with a net tonnage of 11.

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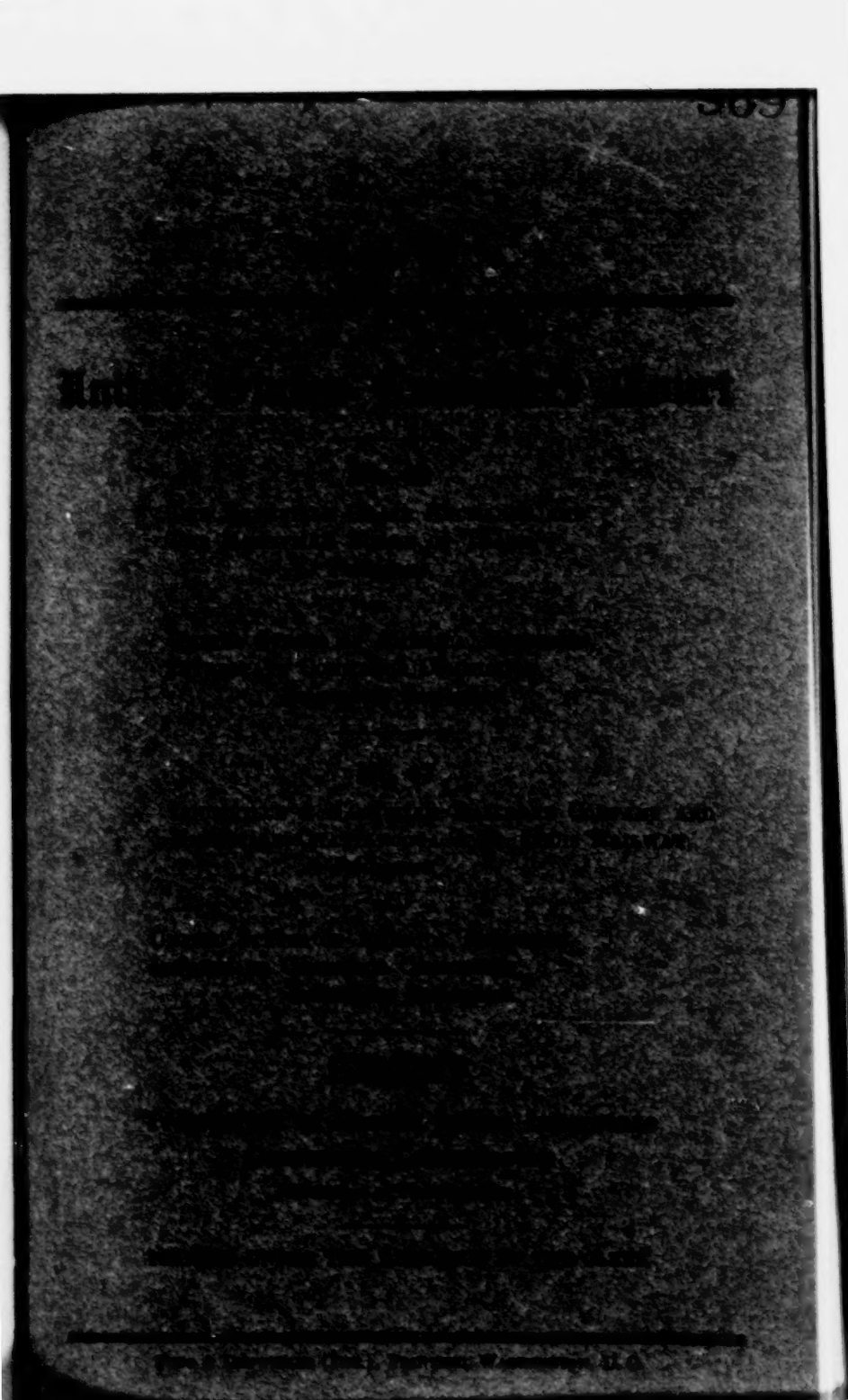
EXHIBIT BELL No. 2.

Page 667.

Exhibit M.

Mills.

Name.	Capacity per day. Flour in bales.	Average business per annum, in bushels.	Capital invested.		Volume of business for 1909.
			In elevators & warehouses	In mills, etc.	
A. & O. L. Jones Mill & Elev. Co.	250	300,000	$22,500.00	$72,500.00	$385,000.00
shville Roller Mills	250	337,500	10,500.00	21,500.00	Not in business in '09
berty Mills	4,000	4,200,000	186,000.00	414,000.00	5,000,000.00
rd Flour Company	1,000	Mi flour, but do not grind.	75,000.00	.....	550,000.00
			$294,000.00	$508,000.00	



a 47.

Filed United States Commerce Court, Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT A.

Interstate Commerce Commission.

Washington.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the answers and intervening petitions filed, and orders of the Commission entered in the case of W. S. Duncan and others against the Nashville, Chattanooga & St. Louis Railway and others, Docket No. 1698, the originals of which are now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission this 22d day of August, 1911.

[Seal Interstate Commerce Commission. 1887.]

JUDSON C. CLEMENTS,
Chairman.

1 Filed Sep. 9, 1908. Docket No. —.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Answer.

The Joint and Several Answer of the Defendants, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

I.

Defendants have no knowledge or information as to whether or not the complainants are severally engaged in business in the respective cities named in the complaint as wholesale dealers in groceries, food products, and like commodities, or as to whether or not said commodities are purchased by complainants in States other than Georgia, and are transported from such States to complainants in the State of Georgia, and therefore can neither deny nor affirm said statements.

II.

Defendants admit that they are each common carriers engaged in the transportation of commodities and articles of interstate commerce, including the transportation of grain, flour, grain products, hay and meats, and other commodities, from Ohio and Mississippi River crossings, Nashville, Tennessee, and points from which rates are made with relation thereto to southeastern points of destination.

III.

Defendants in answer to section three of the complaint deny that under the adjustment of rates and rules and regulation of these defendants relating to the transportation of grain and grain
2 products and hay, from Ohio and Mississippi River crossings and beyond to Southeastern destinations, complainants or others similarly situated, or the localities in which they do business, are unjustly discriminated against in favor of Nashville, Tennessee.

Defendants deny that by means of what is known as the rebilling privilege, with its incidents, Nashville enjoys an undue preference or advantage in the handling of the commodities named over all cities in southeastern territory, including those within the State of Georgia represented by the complainants.

Defendants admit that the rates on grain and grain products apply on any quantity and that there is no difference between the carload and the less than carload rates on said grain and grain products to and from and between all points in Southeastern territory, including those within the State of Georgia, but.

Defendants deny that this adjustment gives to Nashville any undue or unreasonable advantage, or that said adjustment unjustly discriminates against any point or points in southeastern territory or in the State of Georgia.

IV.

In response to section four of the complaint, defendants deny that the privilege of rebilling as allowed and practiced at Nashville operates as an unjust discrimination against Atlanta, Macon, Columbus, or other cities in Georgia, or is an unlawful device whereby the charge for transportation service is lessened, or whereby Nashville is given an undue preference or advantage in violation of the Act to Regulate Commerce and the amendments thereto.

In further answer to said section four of the complaint, defendants, the Louisville & Nashville Railroad Company and the Nash-
ville, Chattanooga & St. Louis Railway, file herewith, and
3 as a part hereof, copies of their circulars and tariffs authorizing the reshipping of grain and grain products and hay at Nashville, Tennessee, when originating at Ohio and Mississippi River crossings and beyond and destined to points in southeastern territory.

Defendants aver that said circulars are regularly published and filed with the Interstate Commerce Commission, and that the man-

er and method of protecting reshipping arrangements at Nashville s authorized thereby are fully set forth in said circulars.

Defendants deny that under the reshipping arrangements set orth in said circulars, the Nashville dealers can and do deliver rain and grain products or hay at points in Georgia contiguous to Atlanta, Macon, Columbus, Albany, Rome, Athens, or other cities n Georgia at lower rates than can or do dealers located in each of hose cities to points contiguous to and naturally tributary to each f those cities.

Defendants further aver that what is true of Nashville, Tennessee, n this respect is also true of Ohio and Mississippi River crossings nd points from which rates are made with relation thereto, and,

Defendants deny that said rate adjustment operates to unjustly discriminate against any jobbing city within the State of Georgia.

Defendants further aver that under said adjustment each jobbing ity in the State of Georgia is able to compete on an equal basis with hippers located at points of origin (primary markets) or transhipment of grain and grain products and hay in the territory naturally contiguous and tributary to each of said jobbing cities.

Defendants admit that shippers at Nashville and other primary markets at Ohio and Mississippi River Crossings and points from which rates are made with relation thereto, can deliver grain, grain products and hay in Milledgeville at a less transportation charge from the primary markets of origin than can shippers at 4 Macon; in Dawson cheaper than can shippers at Columbus; in Elberton cheaper than can shippers at Athens and Augusta; but defendants deny that this fact operates as an undue discrimination against either Macon, Columbus, Athens or Augusta, for the reason that large wholesale dealers are also located at Milledgeville, Dawson and Elberton, and are able to compete under the present rate adjustment on an equal basis with the primary markets of origin, and for the reason that Milledgeville is not naturally tributary to Macon, or Dawson to Columbus, or Elberton to Athens or Augusta, and should not be made so by an arbitrary rate adjustment.

Defendants aver that the practice of reshipping at Nashville is wholly and solely due to the fact that Nashville, Tennessee, is a primary grain market of trans-shipment, located on the Cumberland River, having direct water communication with the great western grain centers, and the defendants the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway were many years ago compelled to establish reshipping arrangements at Nashville in order to compete with the boats in the Cumberland River for the movement of grain into Nashville, Tennessee, and that such reshipping arrangements have been in effect, and have been a transportation and commercial necessity for more than thirty years.

Defendants aver that by reason of its location on the Cumberland River, Nashville can and does compete as a primary grain market with other primary grain markets of Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., St. Louis, Mo., East St. Louis, Ills.,

Memphis, Tenn., Hickman, Ky., Belmont, Mo., Columbus Ky., East Cairo, Ky., Brookport, Ills., Paducah, Ky., Henderson, Ky., New Albany and Jeffersonville, Ind., for the movement of grain into southeastern territory, and

5 Defendants aver that this condition existed prior to the construction of railroads from the Ohio and Mississippi Rivers to Nashville, Tenn., and subsequent thereto, and exists at present, and that such condition was and is wholly beyond the control of the railroads, and was and is due to the natural advantageous location of Nashville, Tennessee, on the Cumberland River.

Defendants deny that the right of the complainants to trade in the territory immediately adjacent and naturally belonging to their respective cities has been destroyed by these defendants, or by the reshipping arrangements at Nashville, Tennessee, and

Defendants specifically aver that said complainants are now and have been in a position to compete on an exact equality with Nashville, Tennessee, and other primary markets located at Ohio and Mississippi River crossings and points from which rates are made with relation thereto to the territory immediately adjacent and naturally tributary to their respective cities, for the reason that the through rates from Ohio and Mississippi River crossings and Nashville, Tennessee, and points made with relation thereto to said territory immediately adjacent and naturally tributary to their respective cities, are based on combination of published tariff rates to said cities, plus the local rates thence, so that said through rates are equally available to the merchants located at the primary markets of origin and to the dealers located at the jobbing cities on which the rates base, and to the small dealers located in the final territories of consumption.

Defendants deny that the practice of reshipping at Nashville, Tennessee, is in any wise unlawful or illegal, or is an unjust discrimination against Atlanta or other Georgia cities, and

6 Defendants deny that the reshipping privilege should be extended to Atlanta, Georgia, or other Georgia cities, for the reason that the circumstances and conditions which compel the existence of the reshipping privilege at Nashville, Tenn., and other primary markets located on the Ohio and Mississippi River do not exist at Atlanta, Georgia, or other Georgia cities; and for the further reason that the allowance of said reshipping privilege at Atlanta, and other Georgia cities would enable each of the said Georgia cities to invade the territory of each of the other Georgia cities, further distant, and result in endless confusion.

Defendants deny that the reshipping arrangement at Nashville is an unlawful advantage, or falls under the condemnation of the Act to Regulate Commerce or its amendments.

Defendants respectfully submit and aver that the reshipping arrangements as published and participated in by them at Nashville, Tennessee, are due to and the result of controlling water competition, and that the present conditions, which have existed without change for many years, have caused and compelled the establishment of said reshipping arrangements, and the allowance of said

elevation charges complained of: and defendants further respectively submit that the conditions at Nashville, Tenn., and the rates and charges available to shippers at Nashville, Tenn., are in no wise different from those at other primary grain markets of Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., St. Louis, Mo., East St. Louis, Ills., Memphis, Tenn., Hickman, Ky., Belmont, Mo., Columbus, Ky., East Cairo, Ky., Brookport, Ill., Paducah, Ky., Henderson, Ky., New Albany and Jeffersonville, Ind.

Defendant, Nashville, Chattanooga & St. Louis Railway, avers that on the — day of —— 1908, owing to certain rulings of the Commission in reference to the allowance by carriers at certain western points of elevation charges, it promulgated and filed with the Commission a circular withdrawing or cancelling elevation
7 allowances theretofore made by it; the cancellation of said charges to take effect October 1st, 1908; but defendant avers allowances, and, therefore, said defendant, unless said competitors have not taken similar action in regard to the cancellation of such allowances, and, therefore, said defendant, unless said competitors take similar action in regard thereto on or before October 1st, 1908, will be placed at a great disadvantage in the handling of grain on the line of its railway. And defendant avers that unless said competitors do take similar action, it may be compelled to ask the Commission for relief in respect to its action in this regard so that it may not be placed at a disadvantage in regard to the handling of grain after said date of October 1st, 1908.

Defendants also submit and aver that the cancellation of said reshipping arrangements at Nashville, Tenn., would be of no benefit to the merchants and dealers located in the southeastern cities mentioned in the complaint for the reason that the merchants and dealers located at the primary grain markets of Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., St. Louis, Mo., East St. Louis, Ill., Memphis, Tenn., Hickman, Ky., Belmont, Mo., Columbus, Ky., East Cairo, Ky., Brookport, Ill., Paducah, Ky., Henderson, Ky., New Albany and Jeffersonville Ind., would still be enabled to secure the same rates as the merchants and dealers located at Nashville now receive, for the reason that the through rates from the territories of origin of grain and grain products and hay to the territories of consumption in southeastern states, are constructed on combination on said Ohio and Mississippi River primary markets and crossings so that the cancellation of reshipping arrangements at Nashville, Tenn., would be of no benefit to the merchants
8 and dealers located at Atlanta, Ga., or other Interior southeastern jobbing cities, or to the business of said cities.

V.

In response to section five of complaint, defendants admit that the rates on grain and grain products from Ohio and Mississippi River crossings and Nashville, Tenn., and points from which the rates are made with relation thereto, and all other points of origin to points in southeastern territory and between all points in said southeastern

territory apply on any quantity, and there is no difference between the carload and the less than carload rates on said articles in said territory.

Defendants deny that this adjustment results in an undue or unjust prejudice or disadvantage to the merchants and dealers located in said southeastern territory.

Defendants admit that under the rate adjustment from Ohio and Mississippi River crossings and points north and west thereof, to certain Mississippi Valley points, the rates on grain and grain products when is less than carloads are higher than when in carloads, but

Defendants aver that this adjustment arises from exceptional circumstances and conditions of competition with lines operating west of the Mississippi River entirely beyond their control; and that the primary adjustment of rates from Ohio and Mississippi River crossings and points north and west thereof to said Mississippi River points and the interior Mississippi Valley points was the any quantity basis, but because of said exceptional and controlling competition of the lines west of the Mississippi River it was necessary to establish higher rates on grain and grain products when in less than carloads than when in carloads to that particular Mississippi Valley territory.

9 Defendants deny that said adjustment is any reason for making such differentiation between less than carload and carload rates on grain and grain products to the southeast where such exceptional circumstances and conditions of competition do not and cannot control.

Defendants admit that in the Official Classification territory and in the Western Classification territory the rates on grain and grain products when in less than carloads are higher than the rates on grain and grain products when in carloads, but,

Defendants submit that this fact has no bearing on the question of the reasonableness of the adjustment of rates on these conditions in the territory south of the Ohio and Potomac Rivers.

Defendants admit that in Southern Classification territory higher rates are published on fertilizer and lumber and salt when in less than carloads than when in carloads, but defendants deny that generally speaking higher rates are published in said Southern Classification territory on less than carloads than in carloads on food preparations, sugar, molasses, or syrup, and

Defendants aver that Southern Classification No. 35, I. C. C. No. 10, effective May 1, 1908, provides for the same rating on less than carloads than on carloads of sugar, molasses, syrup and food preparations.

Defendants aver that the establishment of higher rates on less than carload than on carload shipments of grain and grain products from Nashville, Tennessee, and Ohio and Mississippi River crossings and points from which the rates are made with re-

10 lation thereto to points in southeastern territory would unjustly and unduly discriminate against small dealers and merchants located in interior small southern towns and in the large

southern jobbing centers in favor of said large dealers and shippers located at said large southern jobbing centers, in that it would deprive said small dealers and merchants of the privilege and power of buying their grain and grain products in the primary markets of supply at the same prices and in competition with the large dealers and jobbers at the large southern jobbing centers, and further that it would restrict the markets of supply available to the small dealers and merchants and force them to buy exclusively from the large dealers and jobbers located at the nearest jobbing center.

Defendants aver that under the present just and reasonable adjustment of rates on grain and grain products, from Nashville, and Ohio and Mississippi River crossings to points in southeastern territory, the small merchants and dealers at small towns and at the large jobbing centers are free to purchase wherever they may desire on practically even terms either at the primary grain markets or flour milling points such as Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., St. Louis, Mo., East St. Louis, Ill., Memphis, Tenn., Hickman, Ky., Belmont, Mo., Columbus, Ky., East Cairo, Ky., Brookport, Ill., Paducah, Ky., Henderson, Ky., New Albany and Jeffersonville, Ind., Memphis, Tenn., and Nashville, Tenn., or at the nearest interior southern jobbing center.

Defendants respectfully aver and show that there are located in the interior southeast numerous and important flour and grist mills of greater or less capacity:

That in order to enable said interior southern flour and grist mills to run during the entire year they have been given milling-in-transit arrangements under which they can draw wheat and corn from Nashville and Ohio and Mississippi River Crossings
11 and points from which the rates are made with relation thereto, mill in transit and receive the same through rates on their outbound shipments of flour and meal as are published on flour and meal from said Ohio and Mississippi River crossings and points from which the rates are made with relation thereto to final destination:

That said interior southern flour and grist mills do a large business in selling flour and meal in small quantities direct to the small merchants and dealers and consumers;

That the establishment of a differential between the less than carload and carload rates on flour and meal from Nashville, Tennessee, and Ohio and Mississippi River crossings and points from which the rates are made with relation thereto to points in the southeastern territory would carry with it the establishment of a differential between the less than carload and carload rates on the output of said interior southern flour and grist mills, and

That the establishment of said differential would inevitably curtail or destroy the less than carload business of said interior southern flour and grist mills, and would force said southern flour and grist mills to sell their output only in carload quantities to the large dealers and jobbers at southern jobbing centers to the detriment and injury of said interior southern flour and grist mills and of the small merchants and dealers at southern jobbing centers and at small towns.

Defendants aver that the lawful rates prescribed by the Officials of the States of Georgia, Alabama, Florida, South Carolina, North Carolina and Virginia are all substantially any quantity rates on grain and grain products between points within said States and therefore defendant carriers cannot within any of said States apply higher rates on grain and grain products in less than carloads than in carloads.

Defendants aver that to apply higher rates on grain and
12 grain products in less than carloads than in carloads on interstate movements to and from points in southern states or from points outside of said States to points within said States and not to do so on intrastate movements from points within said States to points within said States would result in endless confusion and discrimination.

Defendants aver that the present rates on Grain and grain products from Nashville, Tenn., and Ohio and Mississippi River crossings and points from which the rates are made with relation thereto are just and reasonable, both in and out of themselves and relatively.

Defendants aver that the adjustment of rates on grain and grain products from Ohio and Mississippi River crossings and points from which the rates are made with relation thereto to points in southeastern territory under which the rates on these articles are the same in less than carloads as in carloads has prevailed for a long period of years and that the trade conditions and commercial relations between the cities and towns and the merchants and dealers and jobbers in said southeastern territory have for many years been based on and adapted to said rate adjustment and have become fixed and firmly established, and

Defendants respectfully submit that the radical changes and disturbances which will occur in said trade conditions and commercial relations if the prayer of the complainants in this case be granted are neither demanded by existing conditions not otherwise necessary or proper or justifiable, and

Defendants further respectfully submit that they should not be compelled to create such an adjustment for the purpose of discriminating in favor of wholesale dealers and merchants located at certain interior southern jobbing cities, when the result would be to discriminate against other wholesale merchants and dealers
13 located at primary markets of supply, and against small merchants and dealers located in said southern jobbing cities and in interior southeastern territory, and to do so would result in endless confusion and discrimination in the adjustment of rates on grain and grain products from and to and between points in said southeastern territory.

And Defenda-ts having fully answered, pray to be hence dismissed.

ED. BAXTER
Counsel for Louisville & Nashville R. R. Co.
ED. BAXTER, AND
SIDNEY F. ANDREWS,
Counsel for N., C. & St. L. R'w'y.

14 Filed Sept. 9, 1908.

Before the Interstate Commerce Commission.

Docket No. —.

W. S. DUNCAN & COMPANY et al.
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, SOUTHERN RAILWAY Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama Great Southern Railroad Company, Georgia Southern & Florida Railway Company, Illinois Central Railroad Company, Central of Georgia Railway Company, Seaboard Air Line Railway, C. Davies Warfield, R. Lancaster Williams, E. C. Duncan, Receivers of Seaboard Air Line Railway; Atlanta & West Point Railroad Company, Western Railway of Alabama, et al.

Answer.

The joint and several answer of the Atlantic Coast Line Railroad Company, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama Great Southern Railroad Company, Georgia Southern & Florida Railway Company, Illinois Central Railroad Company, Central of Georgia Railway Company, Seaboard Air Line Railway Company, and S. Davies Warfield, R. Lancaster Williams and E. C. Duncan, as receivers thereof; Atlanta & West Point Railroad Company, and Western Railway of Alabama.

I.

For lack of information the respondents can neither admit nor deny the statements contained in Section I of the complaint.

II.

Respondents admit the allegations in Section II of the complaint.

III.

Respondents severally deny that under any adjustment of their rates, rules and regulations relating to the transportation of
15 grain, grain products and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, complainants and others severally situated, or the localities in which they do business, are unjustly discriminated against in favor of Nashville, Tennessee.

Respondents further aver that neither of their respective lines of railroad reaches the City of Nashville, Tennessee, and that any privilege of rebilling grain or grain products therefrom is covered by the rules and regulations of the companies whose

lines are initial at Nashville; but these respondents so far as advised deny that Nashville, or the dealers therein in grain and grain products, enjoy any undue or unjust advantage over complainants or cities in Georgia or southeastern territory by said rebilling practice.

Respondents admit that there is in effect an any quantity rate on grain and grain products from Ohio and Mississippi River crossings and from said City of Nashville, Tennessee, to all points in southeastern territory, including those within the State of Georgia, but respondents severally deny that this adjustment gives to Nashville, or dealers therein, any undue or unreasonable advantage, or that said adjustment unjustly discriminates against complainants or any of the localities mentioned in southeastern territory or in the State of Georgia.

IV.

Respondents severally aver for the reasons hereinbefore stated, that they are not sufficiently informed to answer specifically Paragraph IV of said complaint as to the details concerning the practice of rebilling grain, grain products and hay at the City of Nashville, Tennessee, but assume the full and complete answer to said allegations will be made thereto by such defendants as are initial lines at said City of Nashville.

16 V.

In answer to paragraph V of the complaint, as heretofore stated, respondents severally admit that the rates on grain and grain products from Ohio and Mississippi River crossings and Nashville to southeastern territory are any quantity rates, but said respondents severally deny that such adjustment results in any undue or unjust prejudice or disadvantage to the markets and dealers located in said southeastern territory.

Respondents aver that for good and controlling reasons it is not practicable, or desirable, or proper, or reasonable to charge higher rates on less than carload shipments than on carload shipments of grain and grain products from Ohio and Mississippi River crossings, Nashville, Tennessee, and points from which the rates are made with relation thereto to points in southeastern territory.

Respondents aver that under the present just and reasonable adjustment of rates on grain and grain products from Ohio and Mississippi River crossings to points in southeastern territory, the small merchants and dealers at small towns and at large jobbing centers are free to purchase wherever they may desire on practically even terms either at the primary grain markets of flour milling points such as Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., St. Louis, Mo., East St. Louis, Ill., Memphis, Tenn., Hickman, Ky., Belmont, Mo., Columbus, Ky., East Cairo, Ky., Brookport, Ill., Paducah, Ky., Henderson, Ky., New Albany and Jeffersonville, Ind., and Nashville, Tennessee, or at the nearest interior southern jobbing center.

Respondents respectfully aver and show that there are located in

the interior southeast numerous and important flour and grist mills of greater or less capacity;

That the establishment of a differential between the less than carload rates and the carload rates on flour and meal from Ohio
17 and Mississippi River crossings and points from which the rates are made with relation thereto to points in the southeastern territory would carry with it the establishment of a differential between the less than carload rates on the output of said interior southern flour and grist mills; and

Respondents aver that the Railroad Commissions of the State of Georgia, Alabama, Florida, South Carolina, North Carolina and Virginia all prescribe any quantity rates on grain and grain products between points within said States, and therefore defendant carriers cannot within any of said States apply higher rates on grain and grain products in less than carloads than in carloads.

Respondents aver that to apply higher rates on grain and grain products in less than carloads than in carloads on interstate movements to and from points in southern states or from points outside of said states to points within said states and not to do so on intrastate movements from points within said states to points within said states would result in endless confusion and discrimination.

Respondents aver that the present rates on grain and grain products from Ohio and Mississippi River crossings and points from which the rates are made with relation thereto are just and reasonable, both in and of themselves and relatively.

Respondents further aver that the practice of having only any quantity rates on said articles has prevailed for many years, and that the trade conditions and commercial relations between the cities and towns and the merchants and dealers and jobbers in said southeastern territory have for many years been based on and adapted to said rate adjustment and have become fixed and firmly established, and that the radical changes and disturbances which will occur in said trade conditions and commercial relations if the prayer of the complainants in this case be granted are neither demanded by existing conditions nor otherwise necessary or
18 proper or justifiable.

And Respondents having fully answered, pray to be hence dismissed.

ED. BAXTER,
SIDNEY F. ANDREWS,
Counsel for Respondents.

19 Luke Lea,
Attorney-at-law,
66-68 Cole Building,
Nashville, Tennessee.

Before the Interstate Commerce Commission.

I. C. Docket No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY; THE Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company; Atlanta, Birmingham & Atlantic Railroad Company, Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama Great Southern Railroad Company, Georgia Southern & Florida Railway Company, Illinois Central Railroad Company, Central of Georgia Railway Company, Saint Louis & San Francisco Railroad Company, Seaboard Air Line Railway Company, and S. Davies Warfield, R. Lancaster Williams and E. C. Duncan, as Receivers for the Seaboad Air Line Railway; Western Railway of Alabama, and Atlanta & West Point Railroad Company.

Motion for Allowance of Time to File Petition for Intervention.

To the Honorable Interstate Commerce Commission:

Now comes the Nashville Grain Exchange, of Nashville, Tenn., and the Nashville Board of Trade, of Nashville, Tenn., trade and commercial organizations of Nashville, Tenn., by their attorney, Luke Lea, and move the court for an allowance of thirty days within which to file their petitions of intervention, and support of said motion, allege that the respective organizations of Nashville above named are vitally interested in the issues raised and made by the pleadings in this cause, and they further allege that they have not had sufficient time within which to properly prepare their petitions of intervention, setting forth the facts and the grounds upon which they wish to ask the leave of the Court to be made parties to this cause.

LUKE LEA,
Attorney for Nashville Grain Exchange and Nashville Board of Trade.

20 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 26th Day of September, A. D. 1909.

File & Serve. P. J. F. 9-28-08.

Present—Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Petition for Intervention.

Upon consideration of the record in the above entitled case and pursuant to motion made for that purpose by Mr. Luke Lea, on behalf of and as attorney for the Nashville Grain Exchange, of Nashville, Tenn., and Nashville Board of Trade of said Nashville,

It is ordered, That said Nashville Grain Exchange and said Nashville Board of Trade be, and they are hereby, granted leave to intervene in said case, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of said case.

It is further ordered, That a copy of this order be served upon each of the parties to said case.

21 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 3rd Day of June, A. D. 1910.

Present—Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Whereas, on June 24th, 1909, the Commission in the above entitled cause, after complaint and full hearing, made and entered its order therein, as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the day hereof, made and filed a report containing its conclusions thereon, which said report is hereby re-

ferred to and made a part of this order, and the Commission having found in said report that the granting to dealers at Nashville, Tennessee, certain so-called elevation allowances is unduly discriminatory, and further, that the privilege of reshipping hay, grain, and grain products from Nashville is unlawful, and gives undue and unreasonable preference and advantage to dealers in hay, grain, and grain products located at Nashville, and subjects complainants to undue and unreasonable prejudice and disadvantage, which elevation allowances and reshipping privilege have been more particularly described in the report made and filed in this case,

22 "It is ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per 100 pounds or any other sum as an allowance or compensation for service rendered in the elevation, unloading, or handling of grain, grain products, and hay at Nashville.

"It is further ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products, and hay at Nashville the privilege of reshipping or rebilling said products from Nashville, as particularly described in the report herein.

"And it is further ordered, That tariffs withdrawing said allowance may be effective upon three days' notice to the public and the Interstate Commerce Commission given in the manner required by law, and must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case."

And whereas, the effective date of said order was postponed, first until January 1, 1910, and again until April 1, 1910, and finally until further order of the Commission, which postponements were made for the purpose of holding the order in abeyance so far as it related to transit and reshipping privileges and practices at Nashville, Tennessee, in connection with the transportation of grain and hay, until the completion of an investigation by the

23 Commission into practices of this sort and the announcement of its conclusions based upon such investigation, in order that such modification of, or addition to, said order as might be necessary to prevent unjust discrimination as between places with respect to such transit privileges and practices, might be made upon the completion of the investigation aforesaid.

And whereas, that investigation has been concluded and the views of the Commission with respect to the privileges and practices in question have been announced in the report therein, entitled, "In re Substitution of Tonnage at Transit Points."

The defendant carriers in this case are hereby notified and required to show cause before the Commission at Washington, D. C., at 10 o'clock, A. M., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. v. Nashville, Chattanooga & St. Louis Railway Com-

any et al., heretofore referred to, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating, in any respect whatever, between Nashville and Atlanta and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products and hay, upon the ground that such discrimination is undue, unreasonable and unlawful.

It is ordered, That a copy of this order be forthwith served upon each of the parties to this case.

24 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 27th Day of June, A. D. 1910.

Present—Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. Duncan & Company et al.
v.
Nashville, Chattanooga & St. Louis Railway et al.

Upon consideration of the record in the above entitled cause, the Commission upon its own motion, for the purpose of correcting a clerical error, amends the order of the Commission entered herein on the 3rd day of June, 1910, by striking out the last paragraph but one and substituting in lieu thereof the following:

It is ordered, That the defendant carriers in this case are hereby notified and required to show cause before the Commission at Washington, D. C., at 10 o'clock A. M., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. v. Nashville, Chattanooga & St. Louis Railway et al., heretofore referred to, should not be changed and modified so that it will require said carriers, defendants therein, to cease and desist from discriminating, in any respect what-
25 ever, between Nashville and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located within the State of Georgia, and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products and hay, upon the ground that such discrimination is undue, unreasonable and unlawful.

It is ordered, That a copy of this order be forthwith served upon each of the parties to this case.

26 Before the Interstate Commerce Commission, at Washington, D. C.

Filed Sep. 21, 1910. Docket No. —.

No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Joint and Separate Response of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway to the Rules to Show Cause Dated Respectively 3rd Day of June, 1910, and 29th Day of June, 1910, Issued by This Honorable Commission.

Respondents aver and say that the privilege of reshipping hay, grain and grain products allowed at Nashville is not voluntary on their part, but is forced upon them by competitive circumstances and conditions over which respondents have no control, and which competitive circumstances and conditions do not in any respect whatever exist at Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome and Athens, all located within the State of Georgia.

Respondents deny that they discriminate against either of the above mentioned points, or the shippers, consignees, or dealers respectively, with respect to transit and reshipping privileges and practices pertaining to grain, grain products and hay, or in any other respect, or that they violate sections of the Act to regulate Commerce.

Respondents having fully responded, pray that said rules be discharged, and that the order heretofore granted in this case be dissolved, and any order asked for by complainants herein be refused.

PERKINS BAXTER,
Solicitor of L. & N. R. R. Co.
SIDNEY F. ANDREWS,
Solicitor for N. C. & St. L. Ry.

27 Before the Interstate Commerce Commission.

Filed Sep. 21, 1910. Docket No. —.

I. C. C. Docket No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

The joint and several response of the Atlantic Coast Line Railroad Company; Southern Railway Company; Cincinnati, New Orleans

& Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway; Atlanta & West Point Railroad Company; and Western Railway of Alabama to the orders made by the Interstate Commerce Commission in said case, to-wit, of June 3, 1910, and the amended order of June 29, 1910, to show cause before said Commission at Washington, D. C., at 10 A. M. on the 27th day of September, 1910, why the order heretofore issued in the above entitled cause, to-wit on June 24th, 1909, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating in any respect whatever between Nashville, Tenn., and Atlanta, Ga., and the other towns therein mentioned, all situate with the State of Georgia, and the shippers, consignees and dealers respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products and hay, upon the ground that said discrimination is undue, unreasonable and unlawful.

These Respondents respectively, in answer to said order, severally responding, deny that under any adjustment of their rates, rules or regulations relating to the transportation of grain, grain products and hay from Ohio and Mississippi River crossings and beyond to Southeastern destinations, complainants and others similarly
28 situated, or the localities in which they do business, are unjustly discriminated against in favor of Nashville, Tenn., or the shippers and dealers of grain located thereat.

Respondents further aver that neither of their respective lines of railroad reaches the City of Nashville, and that any privilege of rebilling of grain, grain products and hay therefrom is covered by the rules and regulations of the Companies whose lines reach Nashville, but these Respondents, so far as advised, deny that Nashville or the dealers there in grain, grain products and hay, enjoy any undue or unjust advantage over complainants or the cities in Georgia mentioned in said complaint by reason of said rebilling practice.

Respondents further aver that they are advised that the circumstances and conditions affecting the transportation of said grain, grain products and hay to and from Nashville, destined to points in the Southeast, are substantially dissimilar to those affecting the transportation of said traffic to and from Atlanta and the other Georgia points mentioned to the same destinations in said territory, and hence aver that the disadvantages, if any, complained of are not undue or unreasonable, and are not in violation of Section 3 of the Act to Regulate commerce.

And Respondents, having fully answered, pray to be hence dismissed.

SIDNEY F. ANDREWS,
Solicitor for Respondents.

29 Filed Sep. 22, 1910.

No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Answer of the Nashville Grain Exchange, an Intervenor and Defendant, to the Order of the Interstate Commerce Commission Entered in this Cause on June 3rd, 1910, as Amended by a Like Order of said Commission Entered on June 29th, 1910, Requiring the Defendants to Appear and Show Cause, etc.

The defendants, the Nashville Grain Exchange, for answer to the said order of June 3rd, 1910, as amended by the said order of June 3rd, 1910, respectfully avers and shows the following:

That the transit and reshipping privileges and practices pertaining to grain, grain products and hay, extended by the defendant carriers to shippers, consignees and dealers in said commodities at Nashville, Tennessee, do not amount to, and are not, any undue, unreasonable or unlawful discrimination as between Nashville on the one hand and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome and Athens, all located within the State of Georgia, and the shippers, consignees and dealers at said Georgia points, on the other hand.

This defendant avers that the location of Nashville on the Cumberland River, with the resulting competition between river boats and railroad lines serving the Nashville market; the position
30 of Nashville with respect to the producing and consuming territory for grain, grain products and hay; the history of the growth and development of Nashville as a primary grain market or concentration point and milling centre; the facilities for handling, caring for and milling these commodities at Nashville; the interests of the producers and the consumers of these commodities; the proper protection of the commodities themselves while in transit from point of production to point of consumption; and many other surrounding and attendant circumstances and conditions, have all operated and are still operating to differentiate the situation and condition at Nashville from the situation and condition at Atlanta and the other Georgia points named, with respect to the handling of grain, grain products and hay moving into Nashville from or through Mississippi and Ohio River gateways, and reshipped and forwarded to consuming territory lying South and Southeast of Nashville.

This defendant denies that there has been, or is, any undue and unreasonable preference and advantage given by the defendant carriers to the dealers in grain, grain products and hay located at Nashville; and denies that the complainants in this cause, or any other dealers in these commodities at the Georgia points mentioned

r that the Georgia points themselves, are, by reason of any re-
hipping or transit privileges extended by the carriers at Nashville,
ubjected to any undue, unreasonable or unlawful prejudice or dis-
dvantage.

This defendant avers that the situation and condition of Nash-
ille with respect to the handling of grain, grain products and
hay operates to put Nashville squarely in the class of primary
31 markets for such commodities, like Louisville, Cincinnati,
Evansville, St. Louis, and other Mississippi and Ohio River
rimary grain markets, and the other primary grain markets
hroughout the country. This defendant avers that this situation
xisted at Nashville for a great many years; and that Nashville was
a primary grain market and wholesale supply point for grain, grain
products and hay destined for the consuming territory in the South
and Southeast, before any railroad lines were constructed from any
of the Mississippi and Ohio River gateways into the City of Nash-
ville. That at this early time, and before the construction of these
railroads, grain, grain products and hay in large quantities came
into Nashville by boats on the Cumberland River from the grain
producing territories, and were there concentrated and rehandled
and reshipped to the consuming territory in the south and southeast
in which the Georgia points mentioned are located, by the Nashville,
Chattanooga & St. Louis Railway, which at that early time had con-
structed a line of railroad running, with its connections, from Nash-
ville into Southeastern territory; and subsequently, when the rail-
road lines were built from the Mississippi and Ohio River gateways
into Nashville, these railroads found, even at that early day, that
Nashville was the largest primary grain market in the Southeast;
and from that early time up until the present, the railroad lines
serving the Nashville market between the Mississippi and Ohio River
gateways on the north and the consuming territory for grain, grain
products and hay on the South and Southeast, have had to recognize
and reckon with the competition of boat lines upon the Cumberland
River; and, consequently, ever since that early time, and up to the
present, a through rate upon grain, grain products and hay from
these Mississippi and Ohio River gateways, via Nashville, to the con-
suming territory in the South and Southeast, has been maintained,
while at the same time, at Nashville, the transit privileges
32 attacked as unreasonable and unlawful in this cause, have
been extended for all the years from this early time up to the
present.

Even with these transit privileges extended by the carriers at
Nashville, considerable quantities of grain, grain products and hay
have continued for all these years to be brought into Nashville from
producing territory by boats upon the Cumberland River; and were
the transit privileges now extended by the carriers at Nashville with-
drawn, grain, grain products and hay could still be brought into
Nashville by boat lines upon the Cumberland River, and could be
reshipped to the Georgia point, and other points in the southeastern
territory, at a rate not more than the through rate from the Missis-
sippi and Ohio River gateways, via Nashville to the southeast. For

these reasons, the railroads serving the Nashville market have, for all these years, been compelled to extend these transit privileges upon grain, grain products and hay, in order to meet this river competition with respect to the carrying of these commodities.

This defendant shows, however, that because the carriers have been compelled by these competitive conditions, for all these years, to extend these transit privileges upon grain, grain products and hay at Nashville, and upon the faith of these transit privileges so extended for this long time, the grain dealers and interests at Nashville have made during all these years many large investments, amounting to millions of dollars, in facilities for handling grain, grain products and hay, which facilities are now located away from the river, and upon the railroad tracks of the defendant railroads; and which facilities would be practically destroyed for the uses to which they are now put, if these transit privileges were withdrawn by the railroads at Nashville and if the grain dealers had to reform and reconstruct their business at Nashville upon a purely River
33 basis for the movement of grain, grain products and hay into Nashville from the North and North-west and West. And the reformation of their business on this River basis would not only amount practically to the destruction of large fixed investments which the grain dealers have made in facilities for handling grain at Nashville, but time and large investments would be necessary for the provisions of boat lines and handling facilities upon the river; and, in the meantime, the business of one of the largest grain markets in the country would be paralyzed temporarily, with all of the large loss that this would entail, and the business would have to be rebuilt from the ground, upon the river basis, without any ultimate advantage resulting to any of the complainants, or any of the Georgia points mentioned.

This defendant does not desire to be understood as averring that the Cumberland River is only a potential competitive factor in the handling of grain, grain products and hay into Nashville from the North, North-west and West; on the other hand, there are boat lines now in the Cumberland River, actively competing in the carrying of these commodities by water from the Mississippi and Ohio gateways into Nashville; and there are located upon the banks of the Cumberland River at Nashville, and also upon rail lines, large handling facilities in the way of elevators and warehouses, which receive the grain brought in by the boats from producing territory, and load it on the cars through their elevators and warehouses, and reship it to the consuming territory in the South and South-east. These facilities, at present located upon the river and the rail lines, are, however, wholly inadequate of themselves alone, to handle and care for the grain coming into Nashville from Producing territory and reshipped from Nashville to consuming territory. And if the transit privileges extended by the carriers at Nashville were
34 withdrawn, other facilities upon the river and rail lines would have to be provided at large expense, with a consequent and resulting destruction of large investments already now made in

carriers have, for so many years, extended and been compelled to extend, at Nashville, as the result of river competition.

This defendant is advised that the importance of Cumberland River upon the rate and traffic situation at Nashville, and the effect of this river to differentiate market conditions at Nashville from market conditions at cities where no such river facilities are in existence, have already, with considerable frequency, been adjudged and passed upon, not only by this Honorable Commission, but by the courts of the country, including the Supreme Court of the United States; and that importance is far greater now than it was formerly, by reason of the great work done and enormous expenditures made by the United States in recent years in building locks and dams on the Cumberland River below Nashville; and neither Atlanta nor any other of the Georgia points mentioned has any such competitive conditions to constrain the carriers to extend to them transit privileges similar to those extended for so many years at Nashville.

Since the original decision of this cause by the Commission on June 24th, 1909 (Opinion No. 1026), which original decision condemned as unlawful the reshipping extended by the defendant carriers at Nashville, this Commission, after a series of public hearings held at several points throughout the United States, on May 35 3rd, 1910, (Opinion No. 1247), made a report upon the record made up at said hearings, which report is referred to in the said order of June 3rd, 1910, and the amended order of June 24th, 1910; and by its said decision of May 3rd, 1910, the Commission refused and declined to condemn as unlawful the principle involved in the transit privileges as extended by the carriers to hundreds and thousands of markets and commodities throughout the United States. This defendant is advised and avers that the transit privileges extended by the carriers at Nashville are perhaps less objectionable than any of the transit privileges which came before the Commission at any of its public hearings, upon which was grounded the said decision of May 3rd, 1910. When the transit privileges extended by the carriers at Nashville were originally condemned by the Honorable Commission, upon June 24th, 1910, the Commission pointed out the fact that grain, grain products and hay moving into Nashville with a Memphis billing, under the reshipping practices at Nashville would present an opportunity, through the manipulation of expense bills, to manipulate the rate upon the commodity,—although no such actual manipulation of the rate was shown at Nashville. Since said adverse decision, this Memphis billing has been withdrawn by the carriers at Nashville, and now not even the opportunity for such manipulation exists at Nashville under the reshipping and transit privileges at present extended by the carriers there.

This defendant avers that the extension of these transit privileges at Nashville, which are not extended upon grain, grain products and hay at Atlanta and the other points named, presents in no way an unusual situation in this country. Neither Atlanta nor any of the other Georgia points named, are in any sense primary grain markets or concentration points for grain; and it is the custom of car-

for that commodity, and not to extend these privileges at any and every important shipping point in consuming territory for that commodity. Nashville, by having extended to it these reshipping privileges upon grain, grain products and hay, is receiving at the hands of the carriers no more than hundreds and thousands of markets for these and other commodities throughout the country are receiving, where these markets are primary or concentration markets for any commodity; and indeed, at many, and hundreds of primary or concentration markets for given commodities, of not half the importance of Nashville as a grain market, such transit privileges are now, and for many years have been, uniformly extended by the carriers through the United States, as has been for all these years revealed by the tariffs of said carriers on file with this Commission, and has been more recently expressly revealed to this Commission by the public hearings which it held at various points in the country, and upon which it pronounced its decision of May 3rd, 1910.

As illustrating the general practice of the carriers throughout the country to extend these transit privileges at primary or concentration markets for given commodities, just as the transit privileges on grain, grain products and hay are extended the defendant carriers at Nashville, this defendant has taken several affidavits from important carriers and well-informed grain men. An examination of these affidavits will, as this defendant is advised, reveal such a situation as will make it most unjust and inequitable, and discriminatory as against Nashville, for this Commission to order said transit privileges withdrawn there. Said affidavits are filed here-

37 with as Exhibits to this Answer, and are lettered for the purposes of identification, as follows:

1. Affidavit of Walter H. Wylie, who speaks with reference to the transit privileges extended by the Wabash Railroad to primary and concentration markets for commodities on said railroad,—said affidavit being marked Exhibit A to this Answer.

2. Affidavit of W. W. Miller, who speaks in the same way with respect to transit privileges extended by the Missouri, Kansas & Texas Railway; said affidavit being marked Exhibit B to this Answer.

3. Affidavit of Frank B. Bowes, who speaks in the same way with respect to transit privileges extended by the Illinois Central Railroad Company; said affidavit being marked Exhibit C to this answer.

4. Affidavit of J. V. Park, who speaks in the same way with respect to transit privileges extended by the St. Louis, Southwestern Railway; said affidavit being marked Exhibit D to this Answer.

5. Affidavit of Arthur G. Sheer, who speaks in the same way with respect to transit privileges extended by the Atchison, Topeka & Santa Fe Railroad; said affidavit being marked Exhibit E to this Answer.

6. Affidavit of Albert C. Tunny, who speaks in the same way with respect to transit privileges extended by the Monon Railway; said affidavit being marked Exhibit F to this Answer.

7. Affidavit of Benjamin A. Squire, who speaks in the same way

8. Affidavit of B. M. Flippin, who speaks in the same way with respect to transit privileges extended by the Missouri Pacific Railway Company; said affidavit being marked Exhibit H.

38 9. Affidavit of William M. Hopkins, in charge of the traffic matters of the Chicago Board of Trade; said affidavit being marked Exhibit I to this Answer.

10. Affidavit of Thomas F. Yore, with the Rogers Grain Company, at Chicago, Ill.; said affidavit being marked Exhibit J to this Answer.

11. Affidavit of George A. Hogge, with Rosenbaum Bros., Grain merchants at Chicago, Ill.; which affidavit is marked Exhibit K to this Answer.

The transit tariffs defining transit privileges extended by the carriers with respect to whose lines the above affidavits were made, were, in many instances, made exhibits to said affidavits. In order that the record may not be needlessly encumbered, these transit tariffs are not filed with these affidavits, but their identifying I. C. C. numbers are in each instance given in the said affidavits exhibited; and these transit tariffs are, as this defendant is advised, already upon file with this Commission.

All of these affidavits, as well as the record of the public hearings held by this Commission, upon which its decision of May 3rd, 1910 was grounded, not only show the necessity for primary markets for various commodities with respect to the interests of the producer, the carrier and the consumer, but these affidavits also show the necessity for the extension of transit privileges at such primary or concentration markets, and the uniformity with which the carriers of the country do extend such transit privileges at primary and concentration markets throughout the country. This defendant has only taken a limited number of these affidavits; but it is informed

39 and avers that all the carriers throughout the country follow practically the same practice of extending these transit privileges at primary or concentration markets for given commodities.

Under this state of facts, and when Nashville is, and for so many years has been, a primary and concentration market for grain, grain products and hay, and when Atlanta and the other Georgia points have never been such primary or concentration markets for these commodities, but only shipping points in consuming territory for these commodities,—this defendant respectfully submits that it would be most inequitable to the grain interests and market at Nashville to destroy it, and confessedly leave a like situation existing at every other primary market for given commodities throughout the United States; and it would also injure and greatly inconvenience consumers in the South and Southeast by forcing them to resort to remoter markets on and North of the Ohio River for their supplies, and entailing greater delays in deliveries.

And this defendant further avers that under the uncontroverted facts shown at the first hearing in this cause, as well as by the facts and circumstances which will be revealed at the approaching hearing, it will be admittedly established that if these reshipping privi-

named would be benefited: but, on the other hand, the only result would be that the chain of primary markets next North behind Nashville would do all of the business that Nashville is now doing, in the way of shipping grain, grain products and hay into the Southeast, and that Atlanta and the other Georgia points named would be left in the exact position that they now are.

40 This defendant is further advised and avers that the record of the first hearing in this cause admittedly shows that the real cause of the complaint made by Atlanta and the other points named that they cannot compete upon equal terms with Nashville dealers in grain, grain products and hay, is not the extension by the defendant carriers of the reshipping privileges at Nashville; but, on the other hand, lies in the fact that numerous points in Georgia, around Atlanta and the other Georgia points mentioned, have either by the carriers at said points, or by order of this Commission, been made or declared to be basing or junction points, to which through rates via Atlanta from the primary grain markets are made, which through rates are less than a combination of the through rate from these points to Atlanta and the local rate out to said surrounding points formerly was. The result is that any of the primary grain markets of supply, of which Nashville is only one of many, can reach these basing or junction points around Atlanta on a through rate which is less than the rate at which Atlanta dealers can move the grain into Atlanta and stop it there, and then ship it on the local rate to these points, which formerly had their rates based on Atlanta.

This defendant is accordingly advised that there is nothing done at Nashville in the way of reshipping privileges extended by the carriers there to dealers in grain, grain products and hay, that in any way operates to give to such place and dealers any undue, unreasonable or unlawful preference and advantage over the dealers at Atlanta and the other Georgia points named: and this will more fully appear by witnesses who will be orally examined at the hearing.

JOHN H. BELL.

LUKE LEA,
PITTS & McCORMICO,
Att'ys for Defendant, Nashville Grain Exchange.

41 STATE OF TENNESSEE.
County of Davidson:

Personally appeared before me, C. R. Cockle, a Notary Public in and for said State and County, John H. Bell, who being duly sworn states that he is the Vice President of the Nashville Grain Exchange; that he has read the foregoing answer, and that all matters therein stated are true to the best of his knowledge, information and belief.

Witness my hand and seal, at Nashville, Tennessee, this the 17th day of September, 1910.

[SEAL.] C. R. COCKLE,
Notary Public, Davidson County, Tennessee.

42 EXHIBIT "A" TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of Walter H. Wylie.

I have been with the Wabash Railroad twenty-nine years. I am now Assistant General Freight Agent, and have held that position one year. Previous to that I was Commercial Agent of the Wabash at St. Louis twelve years, beginning March 9th, 1896. Prior to that I was Contracting Agent of the Wabash Railroad in St. Louis for about four and a half years. I have been with this Company and its predecessor companies in the capacity of clerk in the Local Freight Office at Kansas City, General Superintendent's office at St. Louis, Auditor's Office at St. Louis; Car Record office, St. Louis; Telegraph Department, St. Louis; General Freight Office, St. Louis. My office is in the Lincoln Trust Building, St. Louis.

The Wabash Railroad runs through, or enters, the following states: New York, Michigan, Ohio, Indiana, Illinois, Missouri, Iowa and Nebraska. The principal cities or markets to which, and through which, the Wabash Railroad runs are Chicago, St. Louis, Buffalo, Detroit, Toledo, Kansas City, Omaha, Council Bluffs, Des Moines, Decatur, Ill., Ft. Wayne, Ind., Ottumwa, Ia., Quincy, Ill., Keokuk, Ia. and Burlington, Ia. I am familiar with the transit or re-shipping and reconsigning privileges and milling-in-transit privileges which the Wabash extends to shippers and markets along its line of railroad. I am familiar with the tariffs and circulars of the Wabash Railroad descriptive of these privileges, and which are on file with the Interstate Commerce Commission, in com-

43 pliance with the law. The geographical position of the cities, their position and condition with respect to water and railroad competition, their position with respect to the producing and consuming territory for given commodities have operated, and are operating, to make certain cities primary markets for certain commodities,—that is, concentration points where a given commodity will be concentrated at the primary or wholesale supply market, and will then be distributed from there in various directions to smaller markets and to consuming territory. These trade centres for given commodities and the resulting concentration of the commodities at these centres of distribution, exist of the necessity for the purpose of supplying the trade, and for the purpose of protecting the producer and consumer, and for the purpose of facilitating the handling of the traffic by the carrier. In other words, the existence of these primary markets or points of concentration of commodities enables the producer to have a quick and reliable source of sale for his commodity, and enables the consumer to have a steady and reliable market from which he can quickly draw his supplies as he needs them, and also enables the carriers in the handling of the traffic to secure quick release of equipment and economic distribution and handling of cars. These market conditions have always existed, but there, of course, has been growth

and development with respect to the market of particular commodities at particularly primary or concentration market centres.

The Wabash Railroad and the other railroads in the country have had to take cognizance of these existing conditions and adjust their traffic rates and rules to meet and serve these condi-
44 tions. The result is that at these primary or concentration markets the Wabash Railroad and other railroads extend to the shippers re-shipping or re-consigning rates and privileges and milling-in-transit and kindred privileges whereby the movements of a given commodity may be interrupted at the primary market or concentration point, and, after being there stopped in transit and milled or stored, or graded, or inspected, or otherwise treated, is then permitted to be re-consigned or re-shipped from that point to a point of ultimate destination, while the through rate is protected,—that is, the stoppage of the commodity in transit and the milling of it or otherwise treating it, is not regarded as an interruption of the through movement so far as fixing the rate which the commodity pays for its entire movement from point of origin to the point of final destination is concerned.

And these practices of extending transit privileges must necessarily exist for the further reason that it is impracticable for the carriers to break their rates at every railroad crossing or junction point, or milling point, or marketing point for a given commodity and unless the interruption of the through movement of the commodity were permitted at such points without adding to the rate on the through movement of the freight, it would result that the various industries handling such commodities would be forced to move and locate themselves at rate breaking points. And it is true that on the faith of the existence of these transit or reconsigning privileges which have existed—to my knowledge—for more than twenty years, millions of dollars have been expended by pri-
45 vate individuals, firms and corporations along the lines of the Wabash Railroad at intermediate points where rates do no- break, but where, by reason of the natural conditions, these points have become concentration points or milling points for given commodities. These millions of dollars have been invested by these private interests in various mills, manufacturies, warehouses and elevators, which have been located and erected for the purpose of caring for, or dealing with, given commodities at the points where the carriers have for these years been extending these transit privileges; and if these transit or re-consigning, or re-shipping privileges are stopped, it will necessitate, as before indicated, the removal of all these industries and investments to points along the line of the carrier where rates break, and their present plants, factory sites and investments can no longer be used as such, and there will be a corresponding loss and confiscation of property that will mean untold hardships to innocent people who for years have been operating under the faith of conditions accepted throughout the traffic world, and which conditions have been evidenced by tariffs of record with the Interstate Commerce Commission for many years. The result is that at various and numerous markets or milling points on the

Wabash Railroad, that railroad extends to shippers re-shipping and transit privileges as above described, and for the purpose of illustration, without attempting to name anything but a limited number of these re-shipping points, and the more important ones only, I will now deal specifically with a few of the many points at which these transit privileges are extended to shippers.

46 *Re-Shipping of Grain and Grain Products.*

Chicago.

At Chicago practically all of the grain and grain products handled are moved under re-shipping or transit rates,—that is to say the grain will be moved into Chicago from the point of origin and there its movement will be interrupted, either for inspection, or grading, or elevation, transfer, sacking, or other purposes, and then, after this period of interruption at Chicago, the grain will be reshipped to final destination, and the through movement of the grain at Chicago will not be regarded as breaking the through movement of the grain for the purpose of assessing freight charges. As evidencing the privileges extended to the shippers of grain and grain products at Chicago by the Wabash, I refer to the following tariffs on file with the Interstate Commerce Commission:

I. C. I. No. 1032, issued by the Wabash Railroad.

I. C. I. Nos. 9, 10, 14 and 15, issued by Paul P. Rainer, Agt.

St. Louis & East St. Louis.

Only a limited amount of grain is handled by the Wabash Railroad under re-shipping or transit privilege rates at St. Louis and East St. Louis, because the rates, as a rule, break on the Mississippi River. We have re-shipping and milling-in-transit privileges on grain from practically all territory where the rates do not break on St. Louis. The rules and tariffs in accordance with which these transit privileges are extended at St. Louis and East St. Louis are on file with the Interstate Commerce Commission, and will be found in tariff—

I. C. C. No. 2059, issued by the Wabash Railroad.

47 Kansas City.

All grain and grain products shipped from Kansas City to eastern points over the Wabash Railroad are handled there under these re-shipping privileges. So that the rate into Kansas City, plus the rate from Kansas City to the Mississippi River and all points east thereof, equals the through rate from original point of shipment to ultimate destination, although the shipment is interrupted at Kansas City for the purpose of extending transit privileges to the shipper.

The rules in accordance with which these transit privileges are extended at Kansas City are on file with the Interstate Commerce

Commission and will be found in tariffs I. C. C. No. 1902 & 1883 issued by the Wabash Railroad Company.

Omaha.

The practice with respect to re-shipping privileges on grain and grain products at Omaha is the same as at Kansas City.

See tariffs last above mentioned, on file with the Interstate Commerce Commission.

Des Moines.

The practice with respect to re-shipping privileges on grain and grain products at Des Moines is the same as at Kansas City. That is to say, all grain from Des Moines handled by the Wabash is handled under re-shipping and stopping-in-transit privileges that protect the through rate on the through movement of the commodity.

The rules in accordance with which these transit privileges are extended at Des Moines are on file with the Interstate Com-
48 merce Commission and will be found in Tariff Wabash Lines I. C. C. No. 1152, issued by the Wabash Railroad Company.

Toledo.

All grain and grain products are handled at Toledo under transit or reshipping privileges, the same as at Kansas City and Des Moines.

See Tariffs I. C. C. Nos. 36, 37 and 38, issued by P. P. Rainer, Agt.

Detroit.

All grain and grain products are handled by the Wabash at Detroit under re-shipping rates and privileges, the same as at Kansas City and Omaha.

Tariffs I. C. C. No. 588, issued by the Wabash Railroad Company, and I. C. C. No. 23, issued by P. P. Rainer, Agent.

Buffalo & Niagara Frontier.

At Buffalo, Black Rock, N. Y., Fort Erie, Ont., Niagara Falls, Ont., and Welland Junction, Ont. all the grain products handled by the Wabash Railroad are handled under re-shipping and transit privileges, the same as at Toledo and Detroit.

See Tariffs Wabash Lines I. C. C. No. 1455 and 2015, issued by the Wabash Railroad Company.

Milling-in-Transit of Grain.

At Decatur, Ill., Quincy, Ill., Hannibal, Mo., La Fayette, Ind. and Ft. Wayne, Ind. there are large milling plants and large tonnages of grain are milled in transit at each of these points, and the through rate from the original point of shipment of the grain to
49 the point of ultimate destination of the milled product is protected.

The Wabash Railroad permits milling-in-transit at very many other important places along the line of its railroad, and, in fact, permits these privileges at all milling stations on its lines.

The rules and regulations under which the Wabash Railroad permits the milling-in-transit privileges along its line and a list of the places at which these privileges are extended by our company will be found in tariff I. C. C. No. 2059, issued by the Wabash Railroad Company and on file with the Interstate Commerce Commission.

All of the tariffs above referred to are herein exhibited, and are lettered seriatim in the order in which they have been above mentioned.

In the above list I have only attempted to give instances of the markets and commodities with respect to which the Wabash Railroad permits re-shipping rates and privileges. I have selected these instances to show the nature and extent of the privileges extended. In permitting these reshipping practices and rates at the various points and markets along the lines of the Wabash Railroad, as a general proposition, the commodity will be billed from the original point of shipment to the concentration point or stopping-off point where the transit privileges are extended, and the tariff rate will be paid by the shipper up to such stopping-off point.

As a general proposition, the bill of lading will merely bill the commodity to such stop-off point or market where the re-
50 shipping privilege is extended, and then the tariff rules and regulations will define and describe the re-shipping privileges at that place and on that commodity. Thereafter, when the shipper desires to re-ship the commodity from said point, it will be billed from there to the destination indicated by the shipper. The full local tariff charge will be collected from the original point of shipment to the stop-off point where the re-shipping privilege is extended to the shipper, and subsequently when the commodity is re-shipped from that point to the ultimate destination selected by the shipper, the commodity will be so billed and the full local rate or a proportional or re-shipping rate is charged. This results in the Wabash Railroad and its connections having overcharged the shipper; that is, they have collected from the shipper in these two payments made by him more than the through rate from the original point of shipment to the ultimate destination. Thereafter an adjustment is had with the shipper or consignee and the Wabash Railroad, through its freight claim department, will refund, or pay back, to the shipper the difference between the total payments that have been made to and *and* the through rate which its protects in this final settlement or adjustment with the shipper or consignee.

The general practice of the Wabash Railroad is that when the commodity moves from the point of origin of the shipment to the concentration point or milling point where the transit privileges are extended by the carrier, it moves at the full tariff rate, and on a bill of lading which names the re-shipping point as the destination of the commodity, and there is nothing in the bill of lading or in

the billing of the commodity in any way to show that it is
51 intended to be re-shipped beyond the stop-off point. The rules and regulations in the tariff along will govern the right of the shipper to have the commodity afterwards re-shipped from the stop-off point to the point of ultimate destination. When the commodity reaches the stop-off point where it is going to — re-shipped, the initial bill of lading will be taken up by carrier and a receipted expense bill will be given to the shipper, and this expense bill will designate the origin of the shipment, the amount of the shipment and the kind of commodity shipped; and this expense bill will be the voucher of the shipper or his vendee, and upon the presentation of it, the commodity, or a like amount of the same commodity, or its milled product, will be re-shipped under the re-shipping rules set forth in the tariffs, the through rate being protected, and the expense bill originally issued the shipper being taken up by the carrier when the commodity is re-shipped to point of final destination on another bill of lading, which will bill the commodity from the re-shipping point to the point of final destination at the tariff rate, and then the refund or settlement will be had as hereinafter indicated.

It is proper to say that at some re-shipping points and with respect to some commodities a nominal charge is made for re-shipping privileges. This, however, does not apply to grain at any point, and no charge is made for re-shipping privilege on grain. It is also proper to say that this nominal charge for re-shipping privilege is intended to cover a portion of the expense that the company is put to at the re-shipping point in the way of switching cars to and from plants, warehouses and factories. And while these nominal
charges are made in some instances for the purposes just
52 indicated, it is proper to say that the actual charge made and collected by the Wabash Railroad for the carrying of the freight is on the basis of the through rate, which is protected, notwithstanding the stop-over and re-shipping privileges extended at the market points. The through rate from original point of shipment to ultimate destination is always protected, and the Wabash Railroad merely charges a portion of the expense incident to the re-shipping privilege, such as switching, et cetera, to the shipper as a separate item or charge, and does not attempt to charge all of these incidental expenses to the shipper. The Wabash Railroad in this respect aids and encourages the industry or the shipper to the extent of bearing a portion of the actual cost of doing the switching, et cetera.

In some cases the commodity which enjoys reshipping privileges at a given point will be consigned in the original bill of lading to a point beyond the stop-off or reshipping point, but will be waybilled to the reshipping point. When this method is followed, the shipper indicates an assumed or conventional destination beyond the stop-off or reshipping point, and this destination is mentioned in the initial bill of lading. The shipper, however, has the right to change this destination and indicate any other destination he may desire when the commodity or its milled product leaves the stop-off or re-

shipping point; and the through rate from the original point of shipment to the ultimate destination finally selected by the shipper will be protected in the way above indicated in compliance with the rules of the tariff.

53 Of course, at stop-off points, that is at the points of concentration or milling points where reshipping privileges are extended, the identity of the commodity in many instances cannot be preserved. For instance, if a carload of grain is stopped off to be milled under the milling-in-transit privilege, the milled product of a like amount of the same kind of grain can be at once reshipped from the milling point and the through rate will be protected. Of course, the identity of the grain stored is not preserved, and the reshipment of a like amount of the same kind of grain as originally came into the market with the reshipping privilege may be reshipped at any time within the limits prescribed by the tariff. The idea is that while the identity of the commodity moving into the point of concentration is not preserved, the Wabash Railroad will only permit the reshipping of a like amount of the same kind of commodity, or its milled product under the reshipping rates and privileges. And it is true that the change of ownership of the commodity in transit or at the milling or reshipping point does not interfere with the reshipping privilege extended by the Wabash. The rebilling and and milling-in-transit privileges are granted by the Wabash Railroad to the commodity and changes in the ownership of the commodity during its transit, or at the market or milling point, do not interfere with the reshipping privileges.

It is the aim and purpose of the Wabash Railroad not to give to any commodity the benefit of the reshipping privileges unless it is entitled to the same. It has rules to prevent abuses and em-

54 ploys reliable agents who do their best in this connection; and if any shipper gets the benefit of a re-shipping rate or privilege to which he is not entitled, as by using some other shipper's receipts or expense bills, it is the result of bad faith and trickery on the part of the shipper and is not with the consent or knowledge of the Wabash Railroad.

I am informed that the practice of reshipping grain at Nashville in the past has been as follows, to-wit:

That the grain moves into Nashville from or through Mississippi or Ohio River crossing points, and the bill of lading reads to Nashville; that the shipper pays the full local rate into Nashville, and there surrenders the initial bill of lading, and has issued to him an expense bill showing the origin of the shipment, the amount and kind of the commodity shipped into Nashville, and the freight paid; and that this receipted expense bill is the voucher of the shipper which is used for the purpose of exhibiting it and surrendering it to the carrier when the commodity described in the expense bill, or a like amount of the same kind of commodity, or its milled product, is subsequently reshipped under the transit privileges there extended the shipper; and that within a period of six months the shipper is permitted to reship to the point of destination he may select in the Southeast a like quantity of the same kind of grain

or the milled product of a like quantity of the same kind of grain in the way and manner just described, and the carriers ultimately receive only the through rate from the original shipping point to the final destination; and that the money that the carriers receive from the shipper over and above the through rate is paid back
55 or refunded to the shipper.

If I am correctly informed as to this reshipping practice at Nashville on grain and grain products, it is in no way different from the reshipping and transit privileges which the Wabash Railroad extends to many commodities and at many markets and stop-off points, *and* I have hereinbefore undertaken to designate and describe.

WALTER H. WYLIE.

STATE OF MISSOURI,
City of St. Louis, ss.:

Personally appeared before me, Lillian F. Bonville, a Notary Public in and for the State of Missouri and the City of St. Louis, on November 13th, 1909, the above named affiant, Walter H. Wylie, who made oath that the facts stated in the foregoing affidavit are true, and the said affiant subscribed to the same in my presence.

Witness my hand and official seal, at the office in St. Louis, Mo., this 13th day of November, 1909.

My commission expires July 13, 1912.

[SEAL.] LILLIAN F. BONVILLE,
Notary Public.

56 EXHIBIT "B" TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of W. W. Miller.

I have been in the railroad business for over twenty-five years; the past twenty years in the Traffic Department of the Missouri, Kansas & Texas Railway. Have been successively Clerk and Chief Clerk in General Freight Office, Commercial Agent at Kansas City from 1893 to 1896, General Live Stock Agent, Fort Worth, Texas, 1896 to 1900, since then Assistant General Freight Agent, located in Chicago, Kansas City and St. Louis. My office is now at 418 Wainwright Building, St. Louis.

The Missouri, Kansas & Texas Railway extends from St. Louis, Hannibal and Kansas City, Mo., and Junction City, Kas., to Denison, Texas, traversing the State of Missouri, Kansas and Oklahoma, connecting at Denison with the M. K. & T. Ry. of Texas and forming a through line from points in Missouri and Kansas to San Antonio and Galveston, Texas.

I am familiar with the transit or reshipping and reconsigning privileges and milling in transit privileges which the Missouri, Kansas & Texas Ry. accords shippers and markets located on its line, also with the several tariffs and circulars, descriptive of these privileges, which are filed with the Interstate Commerce Commission,

in accordance with law, and with the necessity for these privileges which have been given to my knowledge for over twenty years. During this period the territory served by the M. K. & T. Ry. has been developed and many mills and industries located along its line,
many of them being influenced by the fact they could obtain
57 transit privileges and being thus placed on a parity with
similar industries located at other points, successfully compete with them in the markets.

The transit privilege is a necessity in the case of grain and grain products for the reason that the markets and mills must draw their supplies from different sections at different times — account of changes in crop conditions. It is impracticable to so adjust rates that they will break at every junction or milling point and an absolute parity between different shipping and milling points can only be had by applying the through rate from point of origin to final destination and permitting stop in transit at any intermediate market or milling point for the purpose of storing or grinding, etc.

The M. K. & T. Ry. in its Circular 677-*a* (I. C. C. A-3202) copy of which is attached, provides for transit privileges on grain at all points on its line. The term transit privilege is defined in this issue as follows: "Transit privilege" shall be understood to mean stopping enroute for cleaning, Grading, Mixing, Sacking, Storing, Clipping, Milling, Reconsigning, Shelling or Weighing."

Under this Circular shipments are handled as follows: A mill located at Parsons, Kas., may buy wheat at Junction City, Kas., 157 miles north, and ship to Parsons. On arrival the wheat is delivered and charges based on 10½ cents per 100, the Junction City Parsons rate collected. If the product of the wheat is sold locally in Parsons the transaction is closed, but if the mill sells the product at some point beyond, Denison, Texas, for instance, they surrender at time of reshipment, if within six months from date of original shipment of grain, expense bill covering movement into the mill,
58 and the agent issues a new bill of lading and way bills shipment to Denison at balance of the through rate applying on flour (assuming flour is the product shipped) from Junction City to Denison. In this case the figures would be as follows:

Through rate—Flour—Junction to Denison	36¢
Rate paid on wheat—Junction City to Parsons	10½
Balance	25½

The local rate, on flour Parsons to Denison is 34½¢ per 100, and this rate would be charged on a shipment manufactured from wheat marketed locally at Parsons and not covered by in-billing. Were the local Parsons-Denison rate charged on the shipment which originated at Junction City, the charges through would aggregate 45¢ per 100 and the Parsons miller would be at a disadvantage of 9¢ per 100 pounds as compared with his competitor located at Junction City.

Conditions vary from year to year and it is not always possible for the Parsons mill to secure sufficient wheat at Junction City or

other points in Kansas, they are then compelled to draw their supplies from stations along the line in Missouri or go to Kansas City or St. Louis for wheat. Without the transit privilege the mill would be restricted to local wheat marketed at Parsons and as the wheat supply locally at milling points generally is not sufficient to keep them running for any length of time, they would be forced to close down as they could not compete with mills located in market centers, rate basing points, such as Kansas City or St. Louis.

59 The foregoing is equally true in case of grain handled by elevators, a number of which are located along this line and are dependent for their existence on the transit privileges which they enjoy. The principal milling and elevator points on the M. K. & T. are as follows: St. Louis, Hannibal, Clinton, Kansas City, Mo., Junction City, Burlington, Oswego, Coffeyville, Kas., Muskogee, Guthrie, Oklahoma City, Okla., while on the M. K. & T. of Texas there are large mills and elevators located at Sherman, McKinney, Wichita Falls, Denton, Dallas, Fort Worth, Waco, Austin, New Brunfels, San Antonio and Galveston.

The Oklahoma Corporation Commission require "milling in transit" within the State of Oklahoma. Their order is embodied in Circular 677-A, attached, see Item 11. The Texas Railroad Commission also provide for transit privileges in Texas.

The concentration of cotton is permitted in Oklahoma and Texas. Cotton being shipped from the smaller stations to compress points, where it is classified and put in condition for market. After cotton has been forwarded from concentration point to market, the full tariff rate having been paid from point of origin to concentration point, thence to destination, shippers present claim in due form as provided for in Tariff 609-C (I. C. C. A-3283), copy attached, for the difference between total amount paid and the rate from point of origin direct to final destination.

Transit privileges are also given cotton seed oil. This practice enables the refiners located at various points to handle the product of the smaller mills. Refineries have been established at

60 Kansas City and other points based on this arrangement which has been in force for a number of years. M. K. & T. Tariff 4053-B (I. C. C. A-3173), copy attached, provides: "In all cases shipments from point of origin to transit points must be waybilled to transit points on local bill of lading at local rates based on actual weight, but not less than the minimum weight prescribed, and charges collected accordingly. The inbound movement will be restricted to apply on Crude Cotton seed oil only. Upon surrender of such evidence of the reshipment of an equal tonnage in oil or product, to points to which through rates are in effect via transit point, and the transaction is certified to by the Joint Agent of the Transit Inspection Bureau, refund of the inbound charges will be made to the proportion to transit point of the through rates."

It is customary to handle Fruit and Vegetables by reconsignment and changing destination. California oranges are practically all handled in this manner as are also Texas vegetables which move in large quantities at times and can only be distributed to the ad-

vantage of the owner after having left original shipping point; the perishable nature will not permit holding at Southern shipping points until a market can be found. M. K. & T. Tariff 4048-D (I. C. C. A-3250), copy atached, contains the regulations under which this traffic is handled.

I understand that heretofore it has been the practice of the lines entering Nashville to grant transit privilege on grain and grain products at that point on shipments moving from or through Mississippi or Ohio River crossings, which were originally billed to Nashville proper and subsequently, if within six months from date of original shipment, forwarded to points beyond Nashville,
61 the through rate from original point of shipment to final destination being protected, either through claim channels or by billing from Nashville at balance of through rate applicable from that point.

If my understanding is correct, the practice of the Nashville lines was substantially the same as now in force on the line of the Missouri, Kansas & Texas Railway.

W. W. MILLER.

STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before me, Claude O. Pearcy, a Notary Public in and for the State of Missouri and the City of St. Louis, the above named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed to the same in my presence, this 1st day of November, 1909.

My commission expires 17th day of December, 1910.

[SEAL.] CLAUDE O. PEARCY,
Notary Public.

62 EXHIBIT C.

The Answer of Nashville Grain Exchange.

Affidavit of Frank B. Bowes.

I have been with the freight traffic department of the Illinois Central Railroad Company for fourteen years; and am now General Traffic Manager of that Company, in charge of freight traffic.

The Illinois Central Railroad runs through or enters the following States, viz: Illinois, Wisconsin, Minnesota, Iowa, Indiana, Kentucky, Tennessee, Mississippi, Louisiana and Alabama.

The principal cities or markets to which, and through which the Illinois Central Railroad runs are: Chicago, Omaha, St. Louis, Indianapolis, Cairo, Louisville, Memphis, and New Orleans.

I am familiar with the transit of reshipping and reconsigning privileges and milling-in-transit privileges which the Illinois Central extends to shippers and markets along its line of railroad.

I am familiar with the tariffs and circulars of the Illinois Central

Railroad, descriptive of those privileges, and which are on file with the Interstate Commerce Commission, in compliance with the law.

A few of the more important transit privileges which prevail upon the lines of the Illinois Central Railroad are:

Reshipping of Grain.

Omaha.

From Omaha to Chicago, there is in effect a proportional rate of 11 cents on coarse grain, when originating beyond. This is published in Illinois Central Tariff, I. C. C. No. A-6873. The local rate from Omaha to Chicago is 14¾ cents per hundred, which is published in Illinois Central Tariff I. C. C. No. A-7543.

Practically all of the grain traffic from Omaha to Chicago moves on the 11 cent proportional rate. The through rates to Chicago from points in that territory from which the grain would naturally pass through Omaha are the sums of the locals from such points into Omaha and the proportional rate of 11 cents; and the
63 reshipping arrangement at Omaha, whereby grain from beyond moving locally into Omaha is permitted to move from Omaha to Chicago on the 11 cent proportional rate protects the through rate from points of origin to Chicago.

The conditions at Council Bluffs and South Omaha are the same as at Omaha, with respect to rate application.

Decatur, Paxton and Champaign, Ills.

On grain from Illinois territory, consigned through to the western terminal of the Trunk Lines and points east thereof, storage and reshipping privileges are permitted at Decatur, Paxton and Champaign, Ills., on the basis of direct through rate from point of origin to point of ultimate destination, when the traffic is handled under the prescribed rules and safeguards.

Under the reshipping practices at these points, the grain is waybilled locally into Decatur, Paxton or Champaign, the local rate of freight is paid, and the grain delivered into the custody of the consignee. When the consignee or his vendee determines to reship said grain, he is entitled, upon presentation of the expense bill inbound, to a new bill of lading to any eastern destination to which through rates are published from Illinois points; such bill of lading giving reference to the original shipping point, and showing the proportion of the through rate to be charged from the reshipping point to destination. The Grain dealer secures protection of the through rate by a readjustment of the Illinois Central Railroad's local down to its proportion of the through rate up to the reshipping point.

The practice of handling grain from Illinois to the east through the elevators at Decatur, Paxton and Champaign is identically the same as through Chicago and other Chicago stop-over district points, among which are Kankakee and Matteson, Ills.,—upon the line of the Illinois Central Railroad.

64 St. Louis.

From St. Louis to the southeast generally and to New Orleans and other points in the lower Mississippi Valley, the rates are so adjusted as to equalize St. Louis with Omaha. This enables the St. Louis grain dealers to handle grain from Omaha and other western territory in competition with the grain dealers at Omaha.

For illustration: the reshipping rate of 12 cents per hundred on grain from St. Louis to New Orleans is the balance of the proportional rate of 20 cents from Omaha to New Orleans, the proportional rate from Omaha to St. Louis on business originating beyond Omaha being 8 cents per hundred pounds. The movement of the grain into St. Louis on the proportional rate of 8 cents completes the through movement from the point of origin west of Omaha, and upon surrender of the expense bill from Omaha to St. Louis, under the prescribed rules and safeguards, the grain upon reshipment from St. Louis is entitled to the benefit of the proportional rate of 20 cents from Omaha to New Orleans. The strictly local rate applicable on grain from St. Louis to New Orleans is 16 cents, being adjusted with relation to the rate from the Ohio River.

Milling in Transit.

The Illinois Central Railroad Co. has a number of milling in transit arrangements. The principal cereal mills on its line west of the Mississippi River are located at Cedar Rapids, Ft. Dodge and Waterloo, Iowa. The milling in transit privilege at these points is on the basis of applying from the point of origin of the grain to the final destination of the product the through rate on the product from the point of origin of the grain to such final destination. The grain moves from the original shipping points into the milling points on local bills of lading, and is charged the local rates. The milled product is charged the remainder of the grain product rate
65 from the point of origin of the grain to the final destination of the product or to a rate-basing point.

Milling in transit is also permitted at Southern Illinois mills on the line of the Illinois Central Railroad, the business being handled in the same manner as above. An exception to complete protection of the through rate, however, occurs in some instances where there is a slight additional charge made for the milling privilege on account of out of line haul.

These mills have been in operation for about twenty years, and they have invested a great deal of money in machinery, buildings and necessary equipment upon the faith of the continuance of the reshipping or milling-in-transit arrangement. It is necessary in order to keep them alive to continue these transit arrangements, otherwise all the milling industries would have to locate at rate-breaking points.

FRANK B. BOWES.

STATE OF ILLINOIS,
County of Cook:

Personally appeared before me Andrew P. Humburg, a Nota
Public in and for said State and County, Frank B. Bowes, the abo
named affiant, who made oath that the facts stated in his foregoi
affidavit are true.

Witness my hand and official seal, this 31st day of Decemb
1909. My commission expires the 11th day of Feb., 1913.

ANDREW P. HUMBURG,
[SEAL.] *Notary Public.*

66 EXHIBIT D TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

I have been General Freight Agent of the St. Louis Southweste
Railway Co. since September, 1901, prior to that time having ov
pied the position of Assistant General Freight Agent, Chief Cle
and Chief Rate Clerk.

The St. Louis Southwestern Railway runs through or enters t
states of Illinois, Missouri, Arkansas and Louisiana.

The following reconsignment of milling-in-transit arrangemen
prevail:

On Wheat and Corn at Campbell, Mo., as per Tariff 4727, I. C. C
No. 2631, which for convenience is marked Exhibit "A." Unde
this tariff we haul Wheat from our Missouri stations into Campbe
for the purpose of milling-in-transit, the product thereof to be re
shipped to Cotton Belt stations in Arkansas and Louisiana, Sout
of Campbell. Wheat into Campbell is charged at full current loc
tariff rates. The product in carload lots may be re-shipped fro
Campbell to Cotton Belt stations in Arkansas and Louisiana, Sout
of Campbell, at balance of the through rate applicable on the produc
from point of origin of the wheat to ultimate destination of th
product, with the proviso that the rate out on the product shall no
be less than 5 cents per 100 lbs. Freight bills over six months ol
on in-bound grain are not available for transit privileges. The
agent at Campbell is required to keep a tonnage record of all shi
ments handled in and out of Campbell under this arrangement, in
order that shipper may receive proper credit on out-bound shipments.

Corn milled in transit at Campbell is also handled as above.

67 Under our Tariff 3146, I. C. C. No. 1765, which for con-
venience is marked Exhibit "B," we mill in transit at Dexter,
Mo. The method of handling at Dexter, Mo., is practically the sam
as at Campbell, Mo., except that a back haul is provided for, for
which the shipper pays an additional charge.

Under our Tariff 2922, I. C. C. No. 1640, for convenience marked
Exhibit "C," we mill in transit Wheat at Jonesboro, Ark., under
practically the same rules and conditions which prevail at other mill-
ing in transit points.

Under our Tariff 4840, I. C. C. No. 2691, for convenience marked
Exhibit "D," we mill wheat and grain at Paragould, Ark., under
practically the same rules and conditions as at other milling in tran-
sit points.

Under our Tariff 4840, I. C. C. No. 2691, for convenience marked Exhibit "E," we mill wheat and grain in transit at St. Francis, Ark., under practically the same rules and conditions as apply at other milling in transit points.

Under our Tariff 5478, I. C. C. No. 2895, for convenience marked Exhibit "F," Grain, Grain Products, Seeds, Hay and Straw, carloads, when originating at St. Louis, Mo., East St. Louis or Cairo, Ill., or stations on the St. L. S. W. Ry. in Missouri, may be recognized or milled in transit at Pine Bluff, Ark., the ultimate destination to be stations on the St. L. S. W. Ry. in Arkansas and Louisiana, South of Pine Bluff, excepting Texarkana and Shreveport. Under the arrangement authorized in this Tariff, the grain pays full local current tariff rates into Pine Bluff and is taken out at the balance of the rate on the grain or grain products, as the case may be, applicable from point of origin to ultimate destination.

68 Tariff 5573, I. C. C. No. 2926, for convenience marked Exhibit "G," provides our rates, rules and regulations governing concentration of Cotton and Cotton Linters. Under this tariff, uncompressed Cotton or Cotton Linters originating at stations on the St. L. S. W. Ry. and its connections, as provided in the tariff, may be concentrated at concentration points for shipment to interstate destinations.

On page 4 of this Exhibit will be found the rules and regulations. On page 5 is shown the territory from which Cotton and Cotton Linters may be concentrated, and the concentration points available. On page 6 will be found the rates which may be applied on Cotton or Cotton Linters concentrated when it is re-shipped to interstate destinations; for example, on a shipment forwarded locally to a concentration point, full current tariff rates are applied into such concentration points, and when the Cotton or Cotton Linters is re-shipped to interstate destinations, such as Boston, Mass., the rate for hauling the Cotton or Cotton Linters into the concentration points is reduced to the figures shown on page 6; for example, a shipment originating at any station on our line Altheimer, Ark., to Bunch, Ark., inclusive, forwarded locally into Little Rock for concentration and re-shipped to Boston, Mass., would be charged at the full local rate into Little Rock, and upon the required evidence of re-shipment to Boston being presented, a refund is made down to 5 cents per 100 lbs. out of the local rate into Little Rock.

Tariff No. 3259, I. C. C. No. 1864, for convenience marked Exhibit "H," outlines the rules under which Cotton is concentrated at Shreveport, La. The rules and regulations contained in this tariff are very clear and need no elucidation.

J. V. PARK.

69 STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before me Margaret Lally, a Notary Public in and for the State of Missouri and the City of St. Louis, the above named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed to the same in my presence.

My commission expires Jan. 11, 1913.

[SEAL.] MARGARET LALLY,
Notary Public.

70 EXHIBIT E TO ANSWER OF NASHVILLE GRAIN EXCHANGE

Affidavit of Arthur G. Sheer.

I am Chief of the Tariff Bureau of the Atchison, Topeka & Sa
Fe Railway Company, office Railway Exchange, Chicago, Ills.
I have been with said Company about 18 years, and am famil
with the freight tariffs and transit privileges of said Company.
The principal points which the Atchison Topeka & Santa Fe S
tem reaches are Chicago on the East, San Francisco and Los Ange
California, on the west, and El Paso and Galveston, Texas, on
south.
The lines of said System pass through the States of Illinois
small portion of Iowa, Missouri, Kansas, Colorado, New Mexico, (
ritory), Arizona (territory), California, Oklahoma and Texas.
has branches for short distances in Louisiana.
The Atchison Topeka & Santa Fe System has in effect transit pr
ileges as follows:

Reshipping Grain.

Transit Circular No. 2047-D, I. C. C. No. 4854 contains the ru
and regulations governing the reshipment of grain at all points
the Atchison Topeka & Santa Fe Railway and Gulf Colorado & San
Fe Railway.
Under these rules, it is the practice to bill the grain into the ma
ket locally, by local waybill, and the consignee pays the full local ra
inbound. When reshipment is made, the charges from the point
origin to final destination are applied, except when the shipme
moves out of direct line. For out-of-line service, a nominal char
is made, according to the distance traversed, and this charge rang
from one cent per hundred pounds for 40 miles or less to 3 cen
per hundred pounds up to and including 130 miles.
The following are the principal points upon the Atchison Topek
& Santa Fe Railway and Gulf Colorado & Santa Fe Railwa
71 at which the reshipping of grain is practiced: Hutchinso
Kas., Wichita, Kas., Winfield, Kas., Topeka, Kas., Kans
City, Mo., Ft. Worth, Tex., Dallas, Tex., Great Bend, Kas., an
Canon City, Colo.

Milling in Transit.

The Atchison Topeka & Santa Fe Railway and the Gulf Colorad
& Santa Fe Railway permit the milling in transit of grain at a num
ber of points on their line under the following conditions:
Where there is a through rate from origin to destination on grai
and a different through rate from origin to destination on the pro
duct of the grain, the higher of the two rates applies.
A shipment of grain intended to be milled in transit is billed in
the transit point at the local rate, and upon local bill of lading
When the product is shipped out, the balance of the through rat
applies, if such reshipment is made within six months.
The following points on the lines of the Atchison Topeka & Santa

Fe Railway and the Gulf Colorado & Santa Fe Railway are the principal points at which milling-in-transit is practised, viz:

Argentine, Kan., Lawrence, Kas., Topeka, Kas., Emporia, Kas., Newton, Kas., Hutchinson, Kas., Great Bend, Kas., Salina, Kas., Wellington, Kas., Wichita, Kas., Winfield, Kas., Harper, Kas., Anthony, Kas., Roswell, N. M., Purcell, I. T., Ft. Worth, Tex., Gainesville, Tex. and various other points.

Transit Circular No. 2047-D, I. C. C. No. 4854.

Storage and Reconsigning of Apples.

Apples from any point may be shipped to any point on the Atchison, Topeka & Santa Fe Railway, placed in storage, and within six months reconsigned to points on the Santa Fe or to points reached by the Santa Fe and connecting lines, where through rates are in effect from point of origin to final destination, under the following conditions:

72 The through rate from point of origin to final destination less the rate from the point of origin to the storage point will apply from the storage point to the final destination; in other words, the shipment from the storage point to final destination is upon the "balance of the rate"; and the through rate in effect at the time the shipment leaves the point of origin will govern.

A. T. & S. F. Ry. Tariff 6906-H, I. C. C. No. 5037.

Feeding in Transit.

The Atchison Topeka & Santa Fe Railway and the Gulf Colorado & Santa Fe Railway permit the shipment of cattle or sheep from points in New Mexico, Colorado, Kansas and Oklahoma, with privilege of feeding in transit at any point in Kansas on the Atchison Topeka & Santa Fe Railway, where through rates are in effect from the point of origin to the market points; or where through rates are based on combination of locals. The shipments are waybilled to the feeding point at the local rate and minimum weights in effect to final destination, and the charge for the feeding in transit privilege will be 7 cents per hundred pounds—any excess in the weight of shipment from feeding point to market over the weight on which charges were assessed into the feeding point will be charged on the basis of the local carload rate from the feeding point to market.

A. T. & S. F. Ry. Circular 532-B, I. C. C. 1193.

Compress of Cotton.

The Atchison Topeka & Santa Fe Railway and the Gulf Colorado & Santa Fe Railway permit cotton to be stopped in transit for compression at compress points on their lines. The shipments are billed locally into the concentrating point at local rates, which are collected in full at the time of the delivery of the cotton at the

73 points of concentration. When the cotton is reshipped from the concentration point to final destination, it pays the full local rate from the concentration point to such destination, and sub-

sequently the shipper receives a refund down to the basis of the through rate from the points of origin to final destination.

A. T. & S. F. Tariff 5764 F, I. C. C. 4955.

Concentration and Storage of Broom Corn.

The Atchison Topeka & Santa Fe Railway permits the concentration and storage of broom corn in carloads at Wichita, Hutchinson, Sterling and McPherson, Kas. Also at Kansas City, Mo., Alva, Okla., and Amarillo, Texas subject to the following conditions.

The full tariff rate is charged from the point of origin to the concentration or storage point. When a carload is reshipped, it moves upon the "balance of the through rate",—which is protected from the point of origin to destination as of the date when the shipment left the point of origin. The reshipment must be made from the storage point within a year from the date the shipment left the point of origin.

A. T. & S. F. Ry. Tariff 7167-C, I. C. C. 5030.

Storage of Butter, Eggs and Dressed Poultry.

Shipments of butter, eggs and dressed poultry, in straight or mixed carloads, from points in Kansas and Oklahoma, may be stored at points in Kansas and Oklahoma, on direct line of haul, for a period not exceeding one year, without extra charge for the stop. Full local rates are collected from the point of origin to the storage point, and upon presentation of the original inbound expense bill, the through rate from point of origin to final destination will be protected.

A. T. & S. F. Ry. Tariff 8021-A, I. C. C. 4987.

I attach hereto as exhibits serially lettered the various tariffs and circulars referred to.

ARTHUR G. SHEER.

74 Personally appeared before me Agnes K. Donahue, a Notary Public in and for said State and County, Arthur G. Sheer, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal, this 17th day of December, 1909.

My commission expires the 22d day of May, 1911.

[SEAL.] AGNES K. DONAHUE.
Notary Public.

75 EXHIBIT F TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of Albert C. Tumy.

I have been with what is known as the "Monon Railroad" from 1891 to the present time. I have served in the capacities of rate clerk and chief clerk and am at present Assistant General Freight

Agent. I have held the latter position about two years. I have been in the railroad service since 1872. I was originally with the Dayton Short Line and the Bee Line, now included in the Big Four System.

The Monon Railroad, whose corporate name is Chicago, Indianapolis & Louisville Railway Company, operates between Chicago, Ill., and Louisville, Ky., and Michigan City, Ind., and Indianapolis, Ind., which portions of the line are main lines. The Monon has branches extending from Wallace Junction to Victoria, Bedford to Switz City, and Orleans to French Lick Springs. Its road is operated almost entirely within the State of Indiana.

I am familiar with transit or reshipping and reconsigning privileges and with milling in transit privileges, which the Monon extends to shippers in the markets along the line of its road. All of these arrangements are covered by legally published tariffs on file with the Interstate Commerce Commission.

The principal cities or markets to which and through which the Monon runs, are Chicago, Louisville and Indianapolis.

The geographical situation of these cities with respect to the routes of competing roads, makes them markets where certain commodities are concentrated or rehandled.

As illustrating some of the general conditions on the Monon, I would cite the following:

76 The proportional rate from Omaha to Louisville, Ky., on grain originating west of Omaha, destined to Southeastern territory is made up of a combination of rates through St. Louis; this combination on St. Louis being less than the combination of locals via Chicago.

The effect of this is to make St. Louis a natural reshipping or rate breaking point from Omaha to Louisville and the Southeast. On that traffic therefore, no special arrangement or privileges are required at St. Louis in order to enable that market to re-handle Omaha grain to the Southeast.

Chicago is an important competitor of St. Louis for this traffic. It is perfectly obvious that Chicago cannot compete for this traffic on a combination of local rates from Omaha to Chicago plus the local rates from Chicago to Louisville, which would make very much higher than the through rate via St. Louis, were it not for the fact that transit privileges are accorded to Chicago by the railroads serving her interests.

The local rate of the Monon from Chicago to Louisville is 11 cents per hundred pounds. The specific or reshipping rate applicable on business originating beyond Chicago is with few exceptions 8 cents, from Chicago to Louisville. But on grain from Omaha originating at points west thereof, the Monon receives from Chicago to Louisville 5½ cts. It will be noted that the proportional or reshipping rate of 5½ cents, Chicago to Louisville, applied upon this Omaha grain is 2½ cents less than the usual proportional rate of 8 cents applying on reshipped grain between Chicago and Louisville, and that it is exactly one-half of the regular published local rate between Chicago and Louisville. If the Monon Railroad were not

permitted to make this equalization on grain originating at poin
west of Omaha, the grain merchants of Chicago could not purcha
Nebraska grain for Southeastern delivery. The result wou
77 be that the Nebraska producers of grain would be deprive
of the Chicago market for a portion of their crop, the sout
eastern consuming territory would be deprived of purchasing in t
Chicago market, and the Monon Railroad would be deprived of co
peting for the transportation of this traffic.

While the reshipping rate of 5½ cents, Chicago to Louisvill
accepted by the Monon Railroad on this Omaha business, is muc
lower it could afford to accept upon all of its grain traffic betwee
Chicago and Louisville, yet in the opinion of the traffic officers
that company, such rate yields something more than the actu
additional cost of moving the particular traffic, and the Monon Rai
road therefore feels justified in competing for the same at the figur
named.

The principal grain producing points on the Monon Railroad ar
located between Crawfordsville, Ind., and Monon on the main lin
and on the Indianapolis Division between Westfield and Monon.
attach hereto as Exhibit A a map showing the lines of the Mono
Railroad.

The following points are points of intersection between the Mono
Railroad and the Eastern and Western Trunk Lines, via whic
grain may be shipped to eastern cities, viz: Michigan City, Otis
Alida, Haskells, Wanatah, South Wanatah, Lacrosse, Wilder, Rey
nolds, Monticello, Lafayette, Delphi and Frankfort.

All of these points lie in what is known as the 100 per cen
group, and take the same rate on grain to New York and othe
eastern cities.

Grain originating at points on the Monon Railroad, and moving
via these various junctions receives the benefit of reconsigning
privileges at Detroit, Toledo, Akron and other concentration points
beyond the rails of the Chicago, Indianapolis & Louisville Rail-
way.

78 In order to give the rehandlers of grain at Indianapolis
similar privileges, the Monon Railroad permits reconsigning
at that point, protecting the through rates applicable via the direct
lines.

Under the adjustment of rates prevailing in Central Freight As-
sociation and Trunk Line Territory, which includes the states lying
between Chicago and New York are taken as a unit. The rates be-
tween Chicago and New York are as a rule very low rates made in
direct competition with the water transportation of the Great Lakes
and the Erie Canal. The rates between New York and Chicago
being fixed, the rates between New York and intermediate points
are made certain percentages of the Chicago-New York local rates,
said percentages being based approximately upon a mileage re-
lation, and the territory divided into zones or groups.

This adjustment of east-and-west rates in Trunk Line and Cen-
tral Freight Association territory has prevailed for more than 25
years; it is the nearest approach to mathematical precision in the

making of rates that exists in the United States; they are the lowest rates existing in the United States; the rates progress mathematically with the mileage, and are in literal conformity with the long and short haul provision of the fourth section of the Act to Regulate Commerce. The result is that in an easterly and westerly direction throughout the States of Illinois, Indiana, Ohio, Pennsylvania and New York, basing points are unknown, and to meet this condition, transit privileges have been accorded on various articles of traffic at such cities as Buffalo, Toledo, Akron, Bellefontaine, Tiffin, O., Cleveland, Indianapolis, Terre Haute, Sandusky, O., Mansfield, O., Ft. Wayne, Ind., Detroit, Peoria, etc., thus affording convenient markets and storage points for the products of that section, instead of forcing the marketing of such products directly upon the Atlantic seaboard.

79 The blanket rate from local points in the grain producing territory of the Monon Railroad to New York is 19½ cents per hundred pounds. From Indianapolis to New York, the rate on grain is 18 cents per hundred pounds. From the same grain producing points on the line of the Monon, the local rates to Indianapolis range from 5 to 8 cents per hundred pounds. It is evident that grain dealers at Indianapolis, if they were compelled to pay inbound these local rates ranging from 5 to 8 cents, and were compelled to pay outbound the 18 cent rate from Indianapolis to New York, would be forced to retire from competition with grain dealers making direct shipments from the points of production to New York on the through blanket rate of 19½ cents from the same points.

In order to enable the Indianapolis dealers to continue in the business as against dealers making direct shipments to the Atlantic Seaboard, and as against dealers at such points as Cleveland and Detroit, who have reshipping privileges, the Monon Railroad has seen fit to accord transit privileges upon grain at Indianapolis whereby Indianapolis grain dealers ship into Indianapolis upon the local rates, the through rate to ultimate destination being protected when the grain is reshipped from Indianapolis to such destination.

My experience has demonstrated that reconsigning privileges at concentrating points (whereby through rates from point of origin to ultimate destination are protected) are necessary to maintain the business at such reconsigning points. Without same, the business of these handlers could not exist, and they would be forced to move their business to points which are natural basing or ratebreaking points. Instead therefore of having the commercial industries of the country fairly distributed, they would all be congested at such natural concentrating or ratebreaking points.

80 The grain business has been built up and elevators have been established at Indianapolis for a great many years, based upon the faith of the continuance of the reconsigning and reshipping arrangements made by the various Indianapolis lines. The same is true of Louisville, Evansville and Cincinnati.

Not only is it true that reshipping, reconsigning and milling-in-transit privileges keep the commercial industries of the country fairly

distributed, and permit the existence of primary or concentration markets for different commodities at places where these markets could not exist without these privileges, but it is also true that the very existence of these primary or concentration markets for different commodities is of the greatest importance to the producer, the consumer and the carrier. The existence of these primary markets or points of conce-tration of commodities, enables the producer to always have a reliable and quick market for his commodity, at a place the location of which with respect to the producing and consuming territory, and the situation of which with respect to water and rail competition makes it an available or natural concentration point. The existence of various concentration or wholesale supply markets for any given commodity gives to the producer the benefit of competition which he would not otherwise have. At the same time, the existence of these conce-tration or primary markets gives to the consumer a quick and reliable market from which to draw his supplies, and the benefit of competition which he would not otherwise have. At the same time, from the standpoint of the carrier, the existence of these primary or conce-tration markets enables the carrier to secure a quick release of equipment and the economic distribution and handling of cars, which the carrier would not otherwise have if the carrier had to receive the commodity from the producer and haul it continuously to final destination, that is
81 the point of consumption, and, at the same time, by permitting these transit practices, the carriers not only participate in business they could not otherwise get, but the competition between or among the concentration markets increases the business of all the serving carriers.

And without the existence of transit privileges, that is the permissible interruption of the through movement of a commodity at a milling point or market centre, while the through rate is protected from point of origin to point of final destination,—concentration markets or milling points could only exist at places which are rate-breaking points; and it is impracticable for carriers to break their rates at every railroad crossing or junction point, or milling point, or marketing point, for a given commodity.

In all instances, the grain coming into Indianapolis is billed locally to said point at the full local rate; the grain is surrendered to the consignee and an expense bill issued evidencing the inbound shipment, the point of origin, the quantity and the rate paid. Subsequently, upon surrender of the expense bill, a new bill of lading is issued, reading from the original point of shipment to ultimate destination, and the full through rate from original point of shipment to ultimate destination is collected.

The re-shipping rates and milling-in-transit rates and practices permitted by the Monon at other concentration and milling points are, in substance and effect, worked out in the same way as those described in the preceding paragraph with respect to grain at Indianapolis.

I am informed that the practice of reshipping grain at Nashville in the past has been as follows, to-wit:

That the grain moves into Nashville from or through Mississippi or Ohio River crossing points, and the bill of lading reads to
82 Nashville, that the shipper pays the full local rate into Nashville, and there surrenders the initial bill of lading, and has issued to him an expense bill, showing the origin of the shipment, the amount and kind of the commodity shipped into Nashville and the freight paid; and that this receipted expense bill is the voucher of the shipper which is used for the purpose of exhibiting it and surrendering it to the carrier when the commodity described in the expense bill, or a like amount of the same kind of commodity, or its milled product, is subsequently reshipped under the transit privileges there extended the shipper; and that within a period of six months the shipper is permitted to reship to the point of destination he may select in the Southeast a like quantity of the same kind of grain or the milled product of a like quantity of the same kind of grain, in the way and manner just described, and the carriers ultimately receive only the through rate from the original shipping point to the final destination; and that the money that the carriers receive from the shipper over and above the through rate is paid back or refunded to the shipper.

If I am correctly informed as to this reshipping practice at Nashville on grain and grain products, it is in effect the same in principle as the reshipping and transit privileges which the Monon Railroad extends to its patrons.

ALBERT C. TUMY.

STATE OF ILLINOIS,
County of Cook:

Personally appeared before me Marion S. Leaming, a notary public in and for said State and County, the above named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed to the same in my presence.

This 4th day of December, 1909.

My commission expires the 30 day of June, 1912.

[SEAL.] MARION S. LEAMING,
Notary Public.

83 EXHIBIT "G" TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

STATE OF ILLINOIS,
County of Cook, ss:

Benjamin A. Squire, being first duly sworn, on his oath says that he is the Chief Clerk to the Freight Traffic Manager of the New York Central Lines; that he has occupied said position since the first day of November, 1905; that previous to that time he was the Agent of the West Shore Fast Freight Lines; that his office is now located in La Salle Street Station, Chicago, Illinois; that he is generally familiar with the customs, methods and regulations of the several railroads of the country, in respect of milling in transit and

transit privileges, and that in so far as the New York Central Lines are concerned, he has personal and specific knowledge as to the above subject matter.

Affiant makes the following statement, in regard to the above subjete matter:

The grain business in the territory reached by the New York Central Lines is largely handled through what are known as grain centers or markets. Chicago is the principal market on grain traffic from the East and rates are based largely on the market price of grain at Chicago, that is to say, grain is sold on the basis of Chicago prices and rates are generally made on a basis of Chicago prices and rates are generally made on a basis to and from Chicago. Grain is re-handled at certain principal points on the New York Central Lines, such as Peoria, St. Louis, Toledo, Detroit, Cleveland, Buffalo, Louisville, Cincinnati and Indianapolis, all of which places are more or less subservient to Chicago as to prices.

84 The general practice in the market of grain is to protect the through rates from originating point to final destination, thus giving the grain centers the privilege of holding grain and reconsigning it without making any charge for the exercise of such privilege. At these large grain centers the so-called transit privileges are under the jurisdiction of the railroads, through their common agency, the Joint Rate and Inspection Bureau. The billing in and out of such points is under the supervision of that Bureau, so that an absolute check can be, and is made of all grain business. This results in the shippers being accorded through rates on grain from originating points to destination.

The privilege is also granted of forwarding grain from Western points, with the right to hold the same at certain designated points, for purposes of reconsignment. This privilege is granted by the Michigan Central Railroad Company at Montrose, Canada, and by The Lake Shore & Michigan Southern Railway Company at Buffalo, New York. Reconsignments at such places are accepted and the through rate to ultimate destination is protected without giving additional expense, provided that reconsigning orders are received at these points prior to the arrival of the cars at the same. When such reconsigning orders are not so received prior to the arrival of the cars, an additional charge of $2.00 per car is assessed, and in addition to this, the cars are made subject to the regular car demurrage.

This transit arrangement also permits grain to be held at the above named various grain centers, which are provided with storage

85 facilities, for a period of six months. This privilege carries with it the right to protect through rates from originating point to destination. If the grain is not shipped out without said six months' period, local rates are charged on the inbound grain and the local rates are also charged on outbound grain.

Milling-in-transit privileges are also given on shipments of grain. This arrangement applies in all cases where the milling point is intermediate between the shipping point and point of destination. This privilege is universally allowed at all points on the New York Central Lines West of Buffalo. This privilege also carries with it

the time limit of six months, in which the product may be shipped out after the arrival of the grain, with the understanding that on such shipment the through rates on the grain product in effect at the time that the grain originally moved shall apply as though the grain product itself had been shipped at the time the grain actually moved from point of origin to final destination. With this privilege as a general rule, a charge of ½ ct. per hundred pounds, minimum $3.00 per car, is made. This charge is in addition to the regular freight rate. The bases of rates of the New York Central Lines are such that in many cases the grain product rate is slightly higher than the grain rate. The milling-in-transit arrangement as a rule, provides for the charging of the local rate on the grain into the milling point, and also the local rate on the grain products on the outbound shipment. Thereupon the difference between these charges and the through rate on grain products from the originating point to destination is refunded to the shipper, less the milling-in-transit
86 privilege of ½ ct. per hundred pounds, minimum $3.00 per car, and thus the integrity of the through rate is thereby maintained.

There are also arrangements in effect at a number of points for holding, storing and reconsigning beans, seeds, hay and a few other commodities, all of which provide for the protection of the through rate from originating point to final destination.

BENJAMIN A. SQUIRE.

Subscribed and sworn to before me, a Notary Public in and for the County of Cook and State of Illinois, this 15th day of December, A. D. 1909.

[SEAL.]

I. G. NEWELL,
Notary Public.

My commission expires Sept. 25, 1913.

87 EXHIBIT H TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

STATE OF MISSOURI,
City of St. Louis, ss:

B. M. Flippin being duly sworn, deposes and says:

My position is that of Freight Traffic Manager of The Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Leased, Operated and Independent Lines. I have had twenty-two years' experience in the railroad service. My duties as Freight Traffic Manager have direct relation to freight traffic matters, and require me to be familiar therewith, and in that capacity I have had occasion to make a close study and investigation of all arrangements governing so-called "Transit Privileges" on the Missouri Pacific System, as well as in contiguous territory thereto, as practically all of the Trunk Lines serving the Western and Southwestern territory have in effect similar arrangements.

The Missouri Pacific System and allied lines comprise in round figures about sixty-five hundred (6500) miles of road, located in or

traversing the following states: Missouri, Kansas, Nebraska, Colorado, Oklahoma, Illinois, Arkansas, Louisiana, Tennessee and Mississippi. The principal commercial centers or markets to or from or via which the Missouri Pacific System operates are, viz: Mississippi River Points, St. Louis, Mo., East St. Louis and Cairo, Ill., Memphis, Tenn., Natchez, Miss.; Missouri River Points, viz: Omaha, Nebraska City, Kans., and Kansas City, Mo., and other large points, viz:
88 Pueblo, Colo., Sedalia, Springfield, Joplin, Carthage, Mo.; Little Rock, Pine Bluff, Ft. Smith, Hot Springs and Helena, Ark.; Monroe and Alexandria, La.; Lincoln, Nebr., Salina and Wichita, Kans., and innumerable other very important business centers.

"Transit Privileges" are allowed by carriers to enable shippers to receive the benefit of the through rates from point of origin of such commodities to the final point of destination, instead of requiring payment at the rate to the milling point, or merchandizing point, plus the rate from such point, the sum of such rates being generally in excess of the through rate from the first point of origin to point of final destination.

"Transit" implies a through movement, and where such privileges are accorded on commodities milled or merchandized at intermediate points from first point of origin to ultimate destination, such commodities are treated as constructively in course of transportation while in the hands of the owners or millers. In consequence of these privileges certain commercial interests were founded and have been built up to large proportions, especially in the grain and milling trade.

The storage of grain is of commercial value to grain dealers. The "Treatment" of grain is of advantage to them in that it results in enhancing its value. Weighing and Inspection are also of advantage to the owner of grain; and without the protection of through rate from point of origin to ultimate destination, at the concentrating or milling point, such as above, depreciation and financial loss to the owners of the grain would follow.

89 "Transit Privileges" in operation on the Missouri Pacific System are of considerable magnitude, including a wide range of commodities. A summary of the principal ones is as follows:

Agricultural Implements, Carloads, Storage in Transit of.

Applies at points on the Missouri Pacific Railway in Missouri, including Missouri River Points, Kansas City to Omaha inclusive, when re-shipments are destined to points on the Missouri Pacific Railway, in Missouri, Kansas, Colorado and Nebraska, when the storage point is intermediate between point of origin and ultimate destination, via direct line, providing the storage facilities are arranged for by the shipper at the storage point. Re-shipments, or the out-bound shipments from storage point, must be made within six months. No charge is made for the Transit Privilege. These arrangements are covered by Mo. Pacific Tariff No. I. S. 12057-A, (I. C. C. No. 9457), effective July 22, 1906, though same was in effect in previous tariff.

Apples, Carloads, Storage and Reconsignment of.

Applies at any point on the Missouri Pacific System in direct line of shipment between point of origin and final destination. The principal concentrating points being Missouri River points, viz: Kansas City, Mo., to Omaha, Nebraska, inclusive, Hutchinson and Wichita, Kans., which includes the handling of shipments on the transit basis when point of origin is in Colorado, Utah, Oregon,
90 Washington and California; in fact, the entire Western producing Territory. No time limit is required as to the outbound movement from storage point and no extra charge is made for the "Transit Privilege," per Missouri Pacific Tariff No. 2010-B (I. C. C. No. A-1230), effective October 18th, 1909. These privileges have been in effect in previous tariffs.

Broom Corn, Carloads, Storage and Reconsignment of.

This privilege is allowed at Kansas City, Mo. (which is a Missouri River Point), Hutchinson, McPherson, Sterling and Wichita, Kans., when originating at points on the Missouri Pacific System and points on the Kansas City, Mexico and Orient Ry. Co., in Kansas and Oklahoma. A considerable amount of broom corn is raised adjacent to Hutchinson and Wichita, Kans., and a very large percentage of Kansas-Oklahoma broom corn is raised along the line of the Kansas City, Mexico & Orient Railway. Time limit for re-shipment must be within one year from date of shipment from originating point, and no extra charge is made for the "Transit Privilege," except where "Out-of-line" haul is made, slight additional rates are charged; per tariff No. 2080-A, I. C. C. A-1226, effective Nov. 20, 1909, though this privilege has been in effect in previous issues for some little time.

Butter, Eggs and Dressed Poultry, L. C. L., Concentration of.

Applies generally throughout Missouri; Kansas and Nebraska. The principal concentrating points in Central and Southern Kansas are Coffeyville, Arkansas City, Eureka, Great Bend, Hutch-
91 inson, Ottawa, Topeka, Fredonia, Hope, Newton, Salina and Witchita. Northern Kansas and Nebraska points including Missouri River points, viz: Atchison, Ks., Auburn, Nebr., Beloit, Clifton, Concordia, Kans., Falls City, Nebr., Goffs, Kans., Hastings, Nebr., Lincoln, Nebraska City, Nebr., St. Joseph, Mo., Superior, Nebr. At Western Missouri Points, viz: Butler, Lamar and Pleasant Hill, Mo.

The purposes being to enable the concentration of L. C. L. shipments of the commodities mentioned at the concentrating stations, there to be assorted, dressed, repacked and re-shipped in carload quantities.

Re-shipment from concentration point must be made within one year of initial inbound movement. As per Mo. Pacific tariff I. S. 13667-A (I. C. C. No. 9511), effective August 6, 1906, covering Central and Southern Kansas and Western Missouri points, and

Tariff I. C. 13666-A (I. C. C. No. 9510), effective August 6, 1906, covering Missouri, Kansas and Nebraska and Missouri River points. Similar arrangement in effect in previous tariffs. At points in Missouri Pacific Railway east of Missouri River, as well as points on the St. Louis, Iron Mountain & Southern Railway in Missouri and Arkansas somewhat similar arrangements have been and are in effect.

Butter, Eggs, and Dressed Poultry, Carloads, Storage of.

92 Applies at points in Nebraska, Kansas and Colorado, including lower Missouri River points, such as Kansas City and St. Joseph, Mo., Atchison and Leavenworth, Kans. A period not exceeding one year is allowed for the outbound movement and no extra charge is made for the privilege, thus protecting through rate, point of origin to destination, providing no out of direct line haul is involved in which event a charge of 1c. per ton per mile is made for the additional service. Per Mo. Pac. tariff 740 (I. C. C. A-471), effective May 13, 1908.

Coal, Reconsignment of.

93 Supplement No. 66 to Mo. Pacific Circular No. 809 (I. C. C. No. 9934), Item 434-C, effective Oct. 9, 1909, provides the general rules of the Missouri Pacific System governing the reconsignment of coal as well as all other commodities, except live stock or perishable freight, including fresh deciduous or citrus fruits or vegetables, grain and grain products, etc., and various other exceptions, particularly with reference to local movement in the several states, all of which is more fully explained in the supplement on pages Nos. 6, 7, and 8.

Special rules, different from these general rules, however, apply at terminal or market points such as St. Louis, Mo., East St. Louis, Ill., Kansas City and St. Joseph, Mo., Atchison and Leavenworth, Kans., and Omaha, Nebraska, which are taken care of in the terminal tariffs as enumerated on page 7 of the supplement herein mentioned.

Under the provisions of the general rules referred to, the arrangement is that when reconsignment instructions are placed by the owner prior to the car arriving at billed destination, or within twenty-four (24) hours after arrival, no charge for reconsignment is made, otherwise a uniform charge of Two Dollars ($2.00) per car is made, and for "out-of-line" haul, additional charge is made based on a mileage scale of rates with minimum charge of five dollars ($5.00) per car.

Cotton and Cotton Linters, Concentration and Reshipment of.

94 This arrangement applies at all points where compresses are located, the principal concentrating points in Arkansas being Little Rock, Pine Bluff, Ft. Smith, Helena, Newport, Hope, Forrest City, Camden, Eldorado, Van Buren, McGehee and Monticello; in Louisiana—Alexandria, Monroe, St. Joseph.

and Memphis, Tenn., on cotton originating at points on the St. Louis, Iron Mountain & Southern Railway and connecting lines in Missouri, Arkansas, Louisiana and Oklahoma, re-shipped to Gulf Ports, South Atlantic Ports, Southeastern and Carolina Spinning Mills, New England Spinning Mills and Canadian Spinning Mills. Re-shipments are restricted to what is known as the cotton concentrating season from September 1st of one year to and including August 31st of the following year, except in the case of emergencies such as—fire destroying the cotton or compress, in which event the acceptance of such expense bills the succeeding season, September 1st to December 31st, inclusive, may be authorized. There is no extra charge made for this privilege except where cotton is handled out of direct line of transit in which case, slight additional charge is provided for. This as per Mo. Pacific tariff No. 215-A (I. C. C. A-1092), effective September 1st, 1909. The concentration privilege has been in effect for a great number of years. It is the practice to re-issue the arrangement each season about effective September 1st.

Grain, Grain Products, Seed and Hay.

Per Circular No. 2-B (I. C. C. No. *a*-1228) effective November 19, 1909.

Right here I wish to state that "Transit Privileges" now generally accorded had its inception years ago in the milling-in-transit of grain, which had for its purpose the placing of all mills on a direct line of haul, origin of the grain to destination of the product, on a parity by protecting the through rate, point of origin to ultimate destination.

95 The grain and grain product transit privilege is of the greatest magnitude in the Southwest, that portion of the country, generally speaking, as served by the Missouri Pacific System. The privileges allowed are as follows:

Cleaning, Clipping, grading, mixing, re-consigning, sacking, storing and weighing.

At interior milling or elevator points the mode of handling is as follows:

Shipment is billed from country point (shipping point) to transit point (milling or elevator point) on the basis of the local tariff rate. In almost all cases, the outbound shipment of the grain or product thereof is taken at the balance of the through rate, at least it amounts to this, though in actual practice the details of billing, book-keeping, etc., may vary. Local rate is refunded, and agent at transit point bills from his station account point of origin to destination at the through rate, point of origin to ultimate destination, this providing the transit point is in direct line of haul or approximately so, thus protecting the through rate, point of origin to ultimate destination. The exceptions to this are about as follows:

In case of out of line or direct haul, additional charge is made for the extra service, though in a great many cases charges for "Out-of-

line" haul are waived account of commercial conditions and stress of competition. The Missouri Pacific System, for example, with its net-work of rails in the heaviest grain producing territory in Kansas and Nebraska, finds that it must place some of its mills, at least, located on branch lines on a parity with its own main line mills and competing mills located on the more direct trunk lines such as Chicago, Rock Island & Pacific Railway, Atchison, Topeka & Santa Fe Ry., Union Pacific, St. Louis & San Francisco Railroad
96 Co., and the Missouri, Kansas & Texas Railway.

Further, where rate from transit point to destination is higher than from origiand point of the grain, the higher rate obtains. Likewise, where the rate from originating point to transit point is higher than to ultimate destination, the higher rate obtains. Also where the rate on the product is higher than grain, if the re-shipment consists of product, the higher rate obtains.

Six months' time is given to make re-shipment, after which transit privileges are not given, and the traffic must move on the combination of locals.

The foregoing does not generally apply at Missouri River and Mississippi River markets such as Kansas City, St. Joseph, Mo., Atchison and Leavenworth, Kans., Omaha, Nebr., St. Louis, Mo., East St. Louis, Ills., etc., as the grain or its products move from such points to Mississippi River Crossings and points of consumption in the South and Southwest, including Gulf ports for export, and to junction points with connecting lines almost universally on proportional rates. Such proportional rates of themselves represent a transit privilege, as it were; first, they are lower than the local rates; second, parties located at the large markets can draw their supply from the many railroads centering there; third, this is not the case of a so-called interior mill or elevator point (usually a local point) that has but one line from which to draw its supply, or if a junction point seldom on more than two or three roads. In other words, primary market points afford to a decided degree many advantages. Except where there is an additional charge account of "out-of-line" haul, the "Transit Privileges" on grain and grain products, seeds and hay do not entail any additional charge to the shipping public. In other words, the railroads receive no extra compensation for this extraordinary privilege.
97 This extraordinary privilege on grain traffic has assumed enormouse proportions. Agricultural products on the Missouri Pacific System aggregating twenty per cent (20%) of its entire freight traffic, and without doubt a great many markets, milling centers, etc., owe their building up and success to these privileges; further, there is no question but what immense capital has been induced to seek this field of investment owing to these privileges, etc.

While broadly speaking, the "Transit Privileges" on grain are voluntary on the part of the railroads, at the same time, some of the states require it. For example, in Oklahoma the Corporation Commission of that State requires it per their orders Numbers 45, 202, and 205, which is taken care of in Southwestern Lines Tariff No.

51-B, issued by F. A. Leland, Agent, at St. Louis, Mo., effective August 18th, 1909, adopted by the St. Louis, Iron Mountain & Southern Railway Company as its Tariff No. 1863-C; see rule 6.

Lumber, Logs, Bolts, Rough Staves, and Flitches, Carloads.

For Manufacture and Reshipment.

Per tariff No. 93-L (I. C. C. A-1124) effective August 10, 1909. Similar arrangement was in effect for some time in previous tariffs, applies at points in Arkansas on local traffic. Rates contained therein, conditioned upon the finished product being re-shipped via the St. Louis, Iron Mountain & Southern Railway, and its subsidiary lines.

Company requires consignees desiring to avail themselves of the benefit of same, to enter into suitable contract and bond with reference to shipment of specified percentage of the finished product out to the in-bound rough material. Similar tariffs apply in the
98 several other states in the Lumber District, viz, Louisiana, Missouri, etc., as well as on interstate traffic as per Tariff 435-E (I. C. C. A-1125), effective August 10th, 1909. Practically the same arrangements were in effect under previous tariffs.

Rough Lumber, Carloads, for Stacking or Dressing and Reshipment.

There is also in effect at points on the St. Louis, Iron Mountain & Southern Railway *Company* in the Lumber Zone, the following arangement: Mo. Pacific tariff No. 1150-B (I. C. C. A-1127) effective August 10, 1909, rough lumber, carloads, for stacking or dressing and re-shipment via these lines at points in Arkansas. Shipments are way-billed into the stacking or dressing points, of which there are a great many, at the local rate. Provided the lumber is re-shipped via the St. Louis, Iron Mountain & Southern Railway, the difference between the charges paid in and the charges on basis of rates named in the tariff are refunded through the Freight Claim Department subject to certain percentage proportion of the tonnage out-bound versus the tonnage inbound.

Mo. Pacific tariff No. 436-E (I. C. C. A-1125), effective August 10th, 1909, provides similar arrangement as the foregoing on Arkansas interstate traffic as well as on local and interstate traffic at other points on the St. Louis, Iron Mountain & Southern Railway, viz: stations in Louisiana, Missouri, etc.

In connection with the foregoing, reference to Milling-in-Transit is provided for in the tariff applying from Missouri, Arkansas, Louisiana and Oklahoma, etc., to Mississippi River Crossings, such as St. Louis, Carondelet, Mo., East St. Louis, Cairo, Thebes, Ills., and Memphis, Tenn., as per Item 12-A, Page 7, Supplement 4 to Missouri Pacific Tariff No. 1110-A, which provides that lumber may be milled in transit or to be further manufactured into ar-
99 ticles described in the tariff and the through rates apply from original point of shipment and on the net weight of

the lumber or other manufactured articles from points of manufacture, stop privilege limited to six months.

Live Stock, Feeding in Transit of.

Missouri Pacific Tariff No. 1129 (I. C. C. No. A0739), effective January 27th, 1909, provides for feeding in transit at points on the Missouri Pacific Railway *on* stock cattle, carloads, and sheep in double deck cars originating on the Missouri Pacific System in Missouri, Kansas, Nebraska, Colorado and Oklahoma, or received from connecting lines, delivered to this company at the various junctions, when destined Missouri River or beyond, to be fed at points directly intermediate to Kansas City. The stock is way-billed to the feeding point at the rate in effect to the Missouri River, which is designated as their destination. If the stock is forwarded from the feeding point to the Missouri River market, the inbound weight to the feeding point is charged at 7 cents per 100 pounds. If destined to a market beyond the Missouri River, the charges on that quantity (net weight) represented by the freight bills covering the shipment to the feeding point is computed on the difference between the rate, point of origin to Missouri River and rate, point of origin to destination, plus 7 cents per 100 Pounds from feeding point to destination. On shipments fed at points not intermediate between point of origin and market, where a side or back haul is made, charge of 10 cents per car per mile is added on shipments going into feeding points. Freight bills not older than one year prior to date of forwarding from feeding point govern.

Feeding in transit is also allowed at points on the St. Louis, Iron Mountain & Southern Railway, viz: at Cotton seed Oil Mills, 100 some cotton meal and quite a lot of hulls are used for this purpose. Shipment must be forwarded from feeding point within one hundred and eighty (180) days from date of freight bills covering inbound movement. A charge of $10.00 per car is made for this privilege, and where "Out-of-line" haul is involved, charge of 10¢ per car per mile is made with a minimum charge of $10.00 per car.

Very largely, the foregoing St. Louis, Iron Mountain & Southern arrangement applies on Texas cattle fed in Arkansas, seeking Northern Markets, such as St. Louis and Chicago. This privilege is very general at Oklahoma Oil Mill points for the reason that products of oil mills, particularly meal and hulls, come in direct competition with Hay, Grass and other Grain products fed to Cattle.

Oil, Cottonseed, Carloads.

At Kansas City, Mo., Kansas City, Kansas, and Armourdale, Kans., Crude cotton seed oil is given refining privilege in transit; outbound product to consist of refined cotton seed oil, foots, Soap Stock and Tank bottoms. This arrangement covers a very wide range of territory, applying on crude oil from points in the entire Southwestern section of the country, viz: Missouri, Louisiana, Oklahoma and Texas, allowing the refined product to be re-shipped to a

wide range of territory in the West, Northwest and North. The outbound movement is limited to what is known as the Cotton Seed Product season, running from September 1st of one year to October 31st of the succeeding year. No additional charge is made for this privilege. All of this per Southwestern Lines' Tariff No. 62-A (I. C. C. 599), issued by Agent F. A. Leland (which is adopted by the Missouri Pacific-Iron Mountain System as its tariff No. 1149-A). Similar arrangements were in effect in previous tariffs.

101

Sugar, Carloads, Storage in Transit of.

Storage and reconsignment of sugar when originating at Northern Colorado manufacturing points, such as Eaton, Ft. Collins, Greeley, Lamar, Rockford, Windsor, etc., is allowed at storage points east thereof such as Denver, Colo., Hoi-ington, Wichita and Hutchinson, Kans. and Missouri River points, viz; Omaha, South Omaha, Nebr., Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and other points, and no additional charge is made for the privilege. Storage is allowed for a period not exceeding six months from date of shipment point of origin to storage point—. See Trans-Missouri Freight Bureau Tariff No. 28, issued by W. A. Poteet, (His I. C. C. No. 210), which is adopted by the Missouri Pacific-Iron Mountain System as its tariff No. 1890. This tariff simply continues arrangement in effect in previous tariffs.

Wool, Carloads, Storage in Transit of.

Storage of wool at Missouri River points, such as Atchison, Leavenworth, Kans., Kansas City and St. Joseph, Mo., is allowed, when originating at stations in Kansas, Utah, Colorado, Nebraska, Wyoming and New Mexico. This arrangement applies on wool held in storage for a period not to exceed twelve months, and there is no additional charge for this privilege, as per Missouri Pacific Tariff No. 1009 (I. C. C. A-647), effective October 16, 1908.

The range of commodities herein enumerated which are accorded "Transit Privileges," indicates the general trend of the situation throughout the Southwestern Country; and as a general proposition, shipments are made from the shipping point to concentrating point, or market, at the local tariff rate, the bill of lading covering such shipment at point of origin, containing nothing to show that the article or commodity to be transported is to receive a "Transit Privilege," subsequently, shipment is taken out of the concentrating or market point at balance of the through rate. If not in actual practice in all cases, it amounts to this, thus protecting through rate, point of origin to destination, which I have previously averred is the real purpose of "Transit Privileges." Where "Out-of-line" haul is involved, frequently extra charges are assessed therefor.

102

Under the re-shipping practices of the Missouri Pacific System, while the identity of the commodity moving into the concentration point is not preserved, yet re-shipment is permitted of only a like

or equivalent amount of the same kind of commodity, or the product thereof.

Changes in ownership of the commodity during transit or at the market or milling point do not interfere with the re-shipping privileges.

The rules of the Missouri Pacific System governing the matters of re-shipping, reconsignment or milling-in-transit in my opinion safeguard the practices in such a way as to prevent abuses.

The tariffs and supplements thereto herein mentioned are attached hereto and lettered serially in the order in which they are referred to.

B. M. FILIPPIN.

103 STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before me, George C. Donovan, a Notary Public in and for the State of Missouri and the City of St. Louis, the above named affiant, who made oath to the truth of the facts stated in the foregoing affidavit, and subscribed to the same in my presence.

My Commission expires 9th day of November, 1911.

[SEAL.] GEORGE C. DONOVAN,
Notary Public.

104 EXHIBIT I TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of William M. Hopkins.

William M. Hopkins, being duly sworn, states:

I have been in the employ of various railway companies for a period of more than twenty years prior to 1904, and have had a wide experience in the work of the local freight office and traffic department, as well as the auditing department. For about twelve years, I had charge of the freight traffic department of the Minneapolis & St. Louis Railway. I am at present employed by the Chicago Board of Trade, and am in charge of its traffic matters, under the jurisdiction of its Transportation Committee.

My services while in the employ of the different railway companies rendered it necessary for me to become familiar with the rules governing freight stopped in transit, or the rules of the so-called "transit privileges" and I was instrumental in making many of the rules, and know, and am familiar with, the uses and necessity thereof. In connection with the duties of my present position with the Chicago Board of Trade, I am familiar with the rules governing the transit privileges extended to shippers by the various railroads centering in the City of Chicago.

Various circumstances have operated and are operating to make certain points or cities market centres or milling centres for given commodities,—that is, concentration points where a commodity will be concentrated at a primary or wholesale supply market, and the

commodity, or its milled product, will then be distributed from there in various directions to other markets in touch with, or in, consuming territory. Among the circumstances which have operated and are operating to make milling point- or concentration markets in certain localities, are the geographical position of the cities or points; the facilities for water and railroad competition among carriers; the position of the cities or points with respect to where the commodity is produced and where it is consumed; the cost of fuel; labor, proximity to raw material; proximity to final market; etc. etc.

105 The carriers of the country have had to take cognizance of these existing conditions, and have adjusted their traffic rules and rates to meet, and in view of, these conditions. The result is, and for many years has been, that railway companies as a rule have extended what are called "transit privileges" upon various commodities at these concentration supply market and milling points. By "transit privileges" in this connection, I mean the privileges which the carriers extend to the shipper of permitting the through movement of a commodity to be interrupted at the concentration point, or milling point, where the commodity will be stopped in transit and elevated, or warehoused, or sacked, or inspected, or graded, or milled, or otherwise treated, and then, within a certain period fixed upon by the transit tariffs of the carrier, the commodity, or a like amount of the same commodity or its milled product, will be permitted to be forwarded to final destination and a freight charge upon the entire movement of the commodity from point of origin to final destination will be made and received by the carrier, which freight charge will be less than the combination of the local rate in and the local rate out of the concentration point or milling point.

It was the intent and purpose of railway companies in providing and permitting these transit priviliges applicable to through tariffs, to equalize rates via different routes between the same and different carriers, and to equalize rates between terminal points and interior milling or concentration points; and such tariffs providing for these transit privileges have been, as a rule, issued by railroad companies for a long period of years, and have for many, many years been on file with the Interstate Commerce Commission.

These transit privileges which have for years been extended by carriers to shippers at concentration points and milling points, are, and have been, so generally allowed that they have become a

106 part of the traffic adjustment of the country, and industrial conditions and development are in many places and at many markets largely dependent upon the continued existence of these privileges. These privileges are of importance to the producer, the consumer, the miller or warehouseman, and the carrier. By equalizing rates via different routes between the same and different carriers, and by equalizing the rates between terminal points and interior milling or concentration points, these transit privileges are productive of competition among the various markets. The existence of the interior concentration point or milling point and terminal markets enables the producer to have quick, ready and competitive markets for his commodities, and enables the consumer to have

a steady and reliable market in competition with other markets from which to draw his source of supply. The concentration market, where a given commodity is concentrated or assembled and subsequently shipped out to other markets, or to consuming territory, is undoubtedly in many instances, of benefit and importance to the carrier in securing a quick release of equipment, and the economic distribution and handling of cars, etc.

It is likewise true that extending these transit privileges and permitting a commodity to be stopped at an interior concentration or milling point where rates do not break, and then permitted it to be reshipped from that point on the basis of a through rate from point of origin to final destination, undoubtedly tends to equalize and distribute the industries of the country, and prevents these industries from all congesting and locating themselves at terminal points, or where freight rates break. And it is true that investments of enormous sums of money have all along, during the many years in the past, been made in elevators, warehouses, milling plants and other industries, at points where rates do not break, and upon the faith of the existence of such transit privileges being continued at these points in the future as they have been in the past. And
107 it is undoubtedly true that great and enormous injury would be done to many innocent persons, partnerships and corporations that have thus located their industrial plants, warehouses, etc., if these privileges were withdrawn,—for in all such cases these industrial plants, warehouses, etc., could no longer compete with terminal or rate breaking points, and the plants, factories, warehouses, etc., would have to be moved and relocated at rate breaking points; and a heavy loss would thus be entailed upon many persons and interests.

The railroads centering in Chicago have joined in publishing joint transit privileges, known as Joint Transit Privilege Circular No. 10, I. C. C. No. 44, wherein it is provided, among other things, that such transit rules shall apply on grain that is stopped for inspection, weighing, cleaning, clipping, drying, sacking, grading or mixing, or change of ownership, consignee or destination. It is also therein provided that such grain as the transit privileges are desired upon will be subject to full local rates of the inbound road, based on Board of Trade weights. That when such grain or its equivalent is forwarded, it shall pay the through rate from point of origin to point of destination, as shown by the legal published tariff of the railway company via which it is forwarded, if forwarded within a period of six months. A copy of said Transit Circular is filed herewith as Exhibit No. 1 to this affidavit.

A similar method of handling transit grain I understand to be in vogue at Nashville and other terminal markets, such as St. Louis, Peoria, Cincinnati, Louisville, and terminal markets on the Ohio River.

The practices under all transit rules are in substance the same, although sometimes the freight charges are collected at the transit point from the original point of shipment to some destination beyond; but wherever this is the case, such destination beyond is merely a point to or through which freight is billed as a rate-break-

ing point, and is not the ultimate destination of the property. In many instances, and in fact in most instances, the commodity which is given the transit privilege at any point, will be billed in to
108 that point on an original bill of lading which will show the concentration or transit point as the destination of the property, and there will be nothing in the billing of the commodity to show that it is ever to move beyond that point; and then the transit tariffs of the carrier applicable at that point will define the transit and reshipping privileges which the commodity there has extended to it.

The usual method employed by the carriers in handling transit is to keep a record or an open transit account with each shipper generally using the transit privilege. Shipments received into the transit point, whether billed through to some point beyond or billed to the transit point, are taken into transit account and stand on the records to the credit of the consignee. When transit shipments are forwarded from the transit point, the transit account of the shipper is debited with the amount of tonnage forwarded of the commodity that was received at the transit point, or its exact equivalent, or the product thereof.

Thus the carrier is in position at all times to know the exact amount of transit credit due the shipper and in no case may a greater amount of tonnage be forwarded from the transit point than was moved into the transit point on a transit rate, and the integrity of the through rate for an equivalent tonnage or its product is preserved from point of origin to destination upon the commodity or its exact equivalent, or its product. It has not been considered material whether the commodity moved into the transit point with some destination beyond shown on the billing and the through rate there collected, or, whether it moved into the transit point on a local rate and a local rate collected; for in the latter case, when the shipper puts the tonnage into the transit account, it is held to be a declaration on his part that the commodity is a through shipment and is intended to be forwarded to some ultimate destination beyond the transit point.

109 In its very nature transit privileges are only applicable to through transactions, and, whatever the form of handling such transactions may be, the legally published through rate from point of origin to destination must be preserved.

With the above conditions existing throughout the country, and having extended for many, many years, and with traffic rules and industries having been adjusted and become fixed on the faith of these conditions, it must be apparent to any one that any change in the method of making freight rates or the application of transit rules that would destroy the equalization of rates as between market centres and as between milling points, would be confiscatory in its nature, and would entail great money loss upon the various commercial interests of the country; and I believe that the railway companies should be permitted to continue the use of transit privileges wherever these privileges are necessary to equalize rates, and to meet the industrial conditions of the various markets, for it is not prac-

ticable to secure an equalized basis of rates between all points by any other means.

WILLIAM M. HOPKINS.

110 STATE OF ILLINOIS,
County of Cook:

Personally appeared before me William C. Renstrom, a Notary Public in and for said State and County, William M. Hopkins, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal, this 18 day of December, 1909.

My commission expires the 29th day of December, 1910.

[SEAL.] WILLIAM C. RENSTROM,
Notary Public.

111 EXHIBIT J TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of Thomas F. Yore.

I have been with the Rogers Grain Company for a number of years. The Rogers Grain Company is a corporation doing business in Chicago, acting as commission merchants and grain buyers. They operate a large number of elevators throughout Illinois, and are shippers of grain to eastern territory through their terminal elevator at Chicago.

My duties in their employment have had relation to the freight rates applicable to the transportation of their grain.

The method of handling grain, through Chicago on transit basis may be illustrated as follows:

Taking Rossville, Ill., a point on the Chicago & Eastern Illinois Railroad 105 miles south of Chicago, the local rate to Chicago is 6½ cents per hundred pounds on grain. The through rate from Rossville to New York is 19½ cents. When the grain moves from Rossville to Chicago, a bill of lading is issued reading—"Order John Jones, destination New York, Notify Rogers Grain Co., Chicago, Ill., for inspection and transfer."

Upon arrival at Chicago of the supposed shipment made from Rossville, it is placed upon the inspection tracks where it is inspected under State supervision. The grade of the grain is determined, and a railroad notice is made out which is delivered with an average sample of the car's contents to the consignee. The consignee usually makes immediate sale of the grain upon the floor of the Board of Trade.

The purchaser then gives disposition of the grain to the consignee, which is usually to some private or public elevator. If the purchaser desires to reserve to himself the right to reship said grain in accordance with the transit rules of the carriers serving Chicago, he so informs the vender. The consignee then signs a shipping order addressed to the Chicago & Eastern Illinois Railroad, stating the disposition of the car that is desired.

112 The consignee in giving such shipping order attaches thereto the original bill of lading, and for said bill of lading he receives a receipt issued by the Chicago & Eastern Illinois Railroad. For the purpose of preserving to his vendee the reshipping privilege, if that privilege be desired, the consignee notes upon said shipping order the word "transit."

When the grain reaches the elevator to which it may be ordered by the purchaser through the consignee, it is unloaded and weighed by the Official Board of Trade weigh-master, who reports the weight of the contents to the Chicago & Eastern Illinois Railroad. The Chicago & Eastern Illinois Railroad having been furnished with the necessary data by the Board of Trade Weigh-master, presents to the consignee an original and duplicate expense bill, on the basis of the local rate of freight from Rossville to Chicago. The consignee pays the local freight shown by said expense bill, and the Chicago & Eastern Illinois Railroad surrenders to him both the original and the duplicate of the expense bill. Thereafter the consignee presents said original and duplicate expense bill to the Joint Transit Bureau for registration. Upon verification by the Bureau of the rate, weight and warehouse delivery shown in the expense bill, said expense bill is registered and stamped by the Joint Transit Bureau, and given a serial registration number.

After such verification and registration, the original expense bill is returned to the consignee, and the duplicate is retained by the Joint Transit Bureau.

The ownership of this original expense bill carries with it the privilege of reshipping, from the same elevator at Chicago to any eastern destination to which through rates may be published from Rossville, an amount of grain equivalent to that shown in said expense bill.

When the consignee has received back from the Joint Transit Bureau said expense bill properly verified, stamped and registered, he endorses the same to the party to whom he has sold the grain
113 upon the Board of Trade, who thereby becomes entitled to all of the privileges represented by the expense bill.

In the settlement which is made between the Rogers Grain Co. and its vendee for the value of the grain, the details are somewhat complicated and may be best understood by a practical illustration.

We will suppose the sale made by the Rogers Grain Co. (the consignee) to have consisted of a car containing 1,000 bushels of corn, weighing 56,000 lbs., at 55½ cents, the sale being based upon what is termed a "proportional basis." The meaning of "Proportional basis" is that the original consignee assumes the proportional rate from Rossville to Chicago, while the purchaser of the grain assumes the proportional rate from Chicago to ultimate destination, which we have supposed to be New York City. If this grain originating at Rossville be subsequently reshipped from Chicago to New York, the through rate from Rossville to New York of 19½ cents would be protected by the carriers, *of* the transit rules were fully complied with. The divisions of this through rate of 19½ cents are:

Rossville to Chicago	4.5 cents
Chicago to New York	15 "

The purchaser of the grain upon the Chicago Board of Trade inquires at the time of making the purchase whether the grain carries with it a through rate of freight. Being familiar with the through rates and the divisions thereof accruing east and west of Chicago, he knows upon being informed that the grain is "proportional" grain, approximately the figure that he will have to pay from Chicago to New York when he reships, and with that in mind, he contracts for the delivery of the grain on the Chicago Board of Trade at 55½ cents per bushel.

But it should be remember- that the Rogers Grain Co. has paid a 6½ cents local rate on this grain into Chicago, and that when the grain is reshipped, there will be a refund made by the Chicago & Eastern Illinois Railroad of 2 cents per hundred pounds, which figure represents the difference between the local rate of 6½
114 cents, Rossville to Chicago, and the 4½ cents which accrues between Rossville and Chicago, out of the through rate from Rossville to New York of 19½ cents.

Inasmuch as the sale of the grain and the transfer of the expense bill and bill of lading receipt to the vendee of the Rogers Grain Co. passes the title to the grain and the right to the refund of 2 cents per cwt. to said vendee, the Rogers Grain Co. is entitled not only to receive the 55½ cents per bushel at which it sold the grain, but is also entitled to be reimbursed the 2 cents per cwt. by which the local rate from Rossville to Chicago exceeds the division of the through rate—in order that the transaction may so far as it is concerned be terminated.

Instead of making one invoice against its vendee for the grain at 55½ cents per bushel and for the refund of 2 cents per hundred, two invoices are made: one for the grain at 55½ cents per bushel, from which is deducted the 4½ cent division of the through rate accruing between Rossville and Chicago; and this is commonly termed the "western proportion of the through rate." To this invoice is attached the receipt for the original bill of lading, Board of Trade weight-master's certificate and State grain inspection certificate.

Subsequently when the Joint Transit Bureau has returned to the Rogers Grain Co. the original expense bill, properly verified, stamped, and registered, a second invoice is made against the vendee of the Rogers Grain Co. for 6½ cents per hundred, the full local rate which has been paid by them upon the grain from Rossville to Chicago. The effect of deducting the 4½ cents per hundred from the contract price of the grain and subsequently collecting from the vendee the full local rate of 6½ cents per hundred, is that the vendee of the Rogers Grain Co. ultimately pays the full local rate and the consignee the pro-rate to Chicago. The excess of the local of 6½ cts. over the pro-rate west (viz: 4½ cents), said vendee will subsequently get back from the Chicago & Eastern Illinois Railroad by way of refund, when he reships the grain; or, same will be forfeited, if he fails to reship.

115 To the second of said invoice, viz: the one for the full local rate inbound, is attached the endorsed expense bill of the Chicago & Eastern Illinois Railroad.

The reshipped having made sale of the grain to an eastern dealer, receives from such dealer advice as to the destination and instructions as to the route by which it is to move. The reshipped then makes application to the designated road for cars in which to move the train.

After the car has been placed and loaded, the weight ascertained by the official Board of Trade weigh-master, and the shipping grade determined by the State Grain Inspector or the official Board of Trade grain inspector, its delivery to the forwarding carrier and all arrangements for the protection of the through rate from the point of origin to final destination are handled through the Joint Transit Bureau.

The Joint Transit Bureau has a form upon which shipping directions are given by the reshipper through said Bureau to the forwarding carrier. When this form is properly filled out in duplicate, it gives direction to the eastbound road to forward the car to a certain consignee and destination; it also states the elevator at which the car has been loaded, and the date upon which it was loaded. It also shows the point from which the through rate is to be protected (Rossville), the railroad by which the shipment moved locally into Chicago from Rossville, the serial number given by the Transit Bureau to the expense bill, the inbound car number and the inbound tonnage. It also shows the initial and number of the car in which this grain has been loaded for movement east, and the tonnage.

These shipping directions are delivered to the Joint Transit Bureau with the original expense bill attached. Upon verification of the outbound tonnage and of the elevator, the Transit Bureau divides in the shipping directions. The original copy of the directions, with the duplicate of the expense bill attached, is then sent by mes-
116 senger of the Transit Bureau to the eastern railroad designated by the shipper. The eastbound railroad issues a bill of lading upon the data furnished it by the Transit Bureau, inserting in the bill of lading the proportional rate authorized by the Bureau, and stamping upon the bill of lading that the rate used has been authorized by the Bureau. This bill of lading reads from Chicago to eastern destination, and not from Rossville to said destination. The reshipper sends to the eastern railroad and receives his bill of lading, together with a copy or transcript of same. In the meanwhile, the Joint Transit Bureau has cancelled the original expense bill and returned it to the shipper, with the proportions of the through rate accruing east and west of Chicago stamped thereon. This original cancelled expense bill is the authority for refund from the Chicago & Eastern Illinois Railroad, which refund, in the case of a shipment from Rossville, Ill., would amount to 2 cents per hundred pounds,—the difference between the local rate and the prorate accruing to the Chicago & Eastern Illinois Railroad.

The completion of the shipment on the through basis results in the original shipper and ultimate consumer sharing alike in the benefits of rates lower than the sum of the locals, through means of the transit privilege. This is true in every instance where through rates are in effect via Chicago.

In my opinion, transit privileges are, as a general proposition, absolutely necessary to preserve the benefit of the through rate; and it is not practicable, as a rule, to ship grain direct from the point of production to the point of ultimate destination for the following reasons:

Grain is of a perishable nature; especially so at the time of the newcrop movement and also during the germinating season. Long confinement in transit deteriorates its quality.

Fully 85% of the oats sold and shipped east must be stopped in transit for cleaning and clipping. The eastern trade make their purchases on this basis.

117 The marketing of the grain is on such a large scale at the time of new crop movement, owing to lack of storage capacity at the farms, that receipts temporarily greatly exceed the consumptive demand.

From this it will be seen that as stoppage in transit is absolutely essential, as a general proposition, little grain could move upon the through rates, and the vast bulk of the business would be compelled to pay the local rates inbound and outbound, if the railroads did not accord the transit privilege.

The transit privilege is important from a commercial standpoint in that it enables the stoppage of the grain on a through rate at a near-by market for inspection, grading, weighing, clipping, ventilation and general preparation in compliance with the demands of the eastern grain buyers, to whom it is important to be able to deal with responsible firms at Chicago and other western markets, who can guarantee proper grading, inspection and weights.

The Rogers Grain Co. also buys for reshipment grain originating west of the Mississippi River in what is known as Trans-Mississippi territory. The grain from this territory which is stopped at Chicago, sold and reshipped, takes what are known as proportional rates to eastern destinations, which are less than the locals from Chicago to such destinations. When an offer of Trans-Mississippi grain on the Board of Trade is accepted by the Rogers Grain Co., they have in mind, in accepting said offer, the proportional rates accruing east of Chicago, and upon which they will be able to reship.

There are 15 public elevators at Chicago, with a storage capacity of 19,000,000 bushels; private elevators are 67 in number, with a storage capacity of 35,245,000 bushels; total capacity 54,245,000 bushels.

The purpose of the organization of the Joint Transit Bureau is to secure absolute maintenance of through rates and prevent abuses in the handling of expense bill at Chicago. From what I personally know of the workings of that Bureau, I am of opinion that the system followed places a complete check upon all shipments,

118 and that abuses in the way of manipulation of rates or tonnage are not practiced by the Chicago grain dealers. The privilege is so safe-guarded that it would be almost impossible for frauds to be perpetrated.

I am informed that the practice of reshipping grain at Nashville in the past has been as follows: The grain moves into Nashville

from or through Mississippi or Ohio River crossing points, and the bill of lading reads to Nashville; the shipper pays the full local rate from point of origin into Nashville and surrenders the initial bill of lading. Thereupon an expense bill is issued to him, showing the origin of the shipment, the amount and kind of the commodity shipped into Nashville, and the freight paid. When the same grain or an equivalent amount of grain arriving at Nashville by rail is reshipped, the expense bill is surrendered and a new bill of lading issued reading from the Ohio River crossing point (through which the shipment moved into Nashville) to the final destination, at the full published through rate from such Ohio River crossing point to said final destination. The full through rate is paid by the consignee at the final destination of the grain, and the local rate which the Nashville grain dealer has paid into Nashville is entirely refunded to him.

If I am correctly informed as to this reshipping practice at Nashville, it is in effect the same in principle as the reshipping and transit privileges which prevail at Chicago.

THOMAS F. YORE.

STATE OF ILLINOIS,
County of Cook:

Personally appeared before me, Harvey Flyton, a Notary Public in and for said State and County, Thomas F. Yore, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal, the 15th day of December, 1909. My Commission expires the 14th day of December, 1911.

[SEAL.]

HARVEY FLYTON.

119 EXHIBIT K TO ANSWER OF NASHVILLE GRAIN EXCHANGE.

Affidavit of George A. Hogge.

I have been with Rosenbaum Bros., grain merchants of Chicago, for the past nineteen years. They act as commission merchants and grain buyers; also as grain receivers and shippers. Their elevators are located at South Chicago, Illinois, and at Sandusky, O., and they ship to all points south and east of Chicago.

My duties in their employment have had relation to the freight rates applicable to the transportation of grain.

I have read the affidavit of Thomas F. Yore of the Rogers Grain Company, Chicago, and am of opinion that the facts therein set forth on pages 1 to 6 inclusive, correctly state the details with respect to the manner in which grain is received, sold and reshipped at Chicago.

Transit privileges, whereby through rates from point of origin of the grain to ultimate destination are protected, are essential for the purpose of equalizing competitive markets or localities.

The primary or terminal markets receive the grain after harvest, and it is held at such primary or terminal markets in prospect of the demand from the markets of consumption. When the consuming demand occurs, the consuming market is open to the country dealer as well as to the dealer in the terminal market; and if the through rate via the terminal market were not protected, its existence as such a market would be at an end, and shipments would all have to be made direct in order to get the benefit of through rates. If the dealer at the terminal market were compelled to pay the sum of the locals inbound and outbound, he would in some instances be at a disadvantage of several cents per bushel as compared with direct shipment.

At the present time, through rates are protected by means of "Transit Arrangements," and are available at all times to any dealer along the line of movement. Every shipping station and market can compete on absolutely even terms, except that some may have natural advantages over others.

Under the present system of protecting through rates, the dealer in Chicago, for instance, pays exactly the same rate for movement of grain from Illinois points to the seaboard or New England
120 territory, as is paid by the direct shipper. Any change in this method would cause embarassment and probably great loss.

The protection of through rates by means of transit privileges is of advantage to the producer, in that it enables him to find a ready market at all times, under competitive conditions, since all markets are enabled to use the same basis of rates.

The proper market ordinarily for any commodity is that which it can reach easily and promptly, and whether it proceeds directly or by degrees to that market should be determined chiefly by the law of supply and demand without restrictions resulting from rate adjustment. This gives the shipper or grower a choice of markets, and works neither discrimination nor harm to any interest.

The movement under transit privileges from point of origin to ultimate destination is essentially a through movement, and the carrier in protecting the through rate upon such movement suffers no pecuniary hard-ship, since the through rates are fixed with a view to securing the business, and the use of local rates inbound and outbound would not accomplish that result. While there is an apparent sacrifice of revenue in that the carrier does not receive its local inbound and its local outbound, yet it would not be able to compete for the business at all, unless it protected through rates.

The consuming markets in the east, for instance, are open at some times but closed at others, dependent upon general conditions. The dealer at a terminal market, such as Chicago, holds the grain in storage, awaiting the consumptive demand. He may have to hold the grain in storage for quite a long period, awaiting the demand; but when the demand arises, he is enabled to supply it with as little delay as possible, for by that time the grain will have gone through with the general preparation required by the eastern grain buyers.

Transit privileges are therefore of benefit to the grower, the dealer and the consumer, and all share alike in their advantages.

The according of transit privileges at large primary markets such as Chicago has led to the establishment of expensive facilities which are of manifest advantage to all concerned in the handling of grain.

121 At Chicago, there is an elaborate and highly organized system of official grading and inspection. The same is true as regards the weighing of grain. All of these facilities are operated at great cost, and they would be unwarranted at points where the movement of grain is small.

Terminal or primary markets can exist only under a protection of through rates by means of transit privileges, or by a direct equalization of rates; and they afford many advantages of prime importance such as low interest rates, cheap insurance, inexpensive storage, and facilities for clipping, drying and cleaning grain, etc.

The expense of maintaining a large plant for the handling of grain is so great, that such plants can exist only in favorable localities, and their function of receiving, handling and preparing the cereal crops of this country for actual use should be assisted in every legitimate way.

There is also a moral advantage in the protection of through rates under transit privileges, for inasmuch as all shippers are permitted to work on an even basis, the incentive to unfair or corrupt practices is lessened, and the result is a better observance of the law.

The purpose of the organization of the Joint Transit Bureau is to secure maintenance of through rates and to prevent abuses. From my personal knowledge of that Bureau, I am of opinion that the system followed places a complete check upon all shipments, and that abuses are not practiced by Chicago grain dealers.

I am informed that the practice of reshipping grain at Nashville in the past has been as follows: The grain moves into Nashville from or through Mississippi or Ohio River crossing points, and the bill of lading reads to Nashville; the shipper pays the full local rate from point of origin into Nashville and surrenders the initial bill of lading. Thereupon an expense bill is issued to him, showing the origin of the shipment, the amount and kind of the commodity shipped into Nashville and the freight paid. When the same grain or an equivalent amount of grain arriving at Nashville by rail or reshipped, the expense bill is surrendered and a new bill of lading issued reading from the Ohio River Crossing point (through which

122 the shipment moved into Nashville) to final destination, at the full published through rate from such Ohio River crossing to said final destination. The full through rate is paid by the consignee at the final destination of the grain, and the local rate which the Nashville grain dealer has paid into Nashville is entirely refunded to him.

If I am correctly informed as to this reshipping practice at Nashville, it is in effect the same in principle as the reshipping and transit privileges which prevail at Chicago.

I am also familiar with the reshipping practices which prevail as to grain at Sandusky, O., and they are in effect the same as those

which prevail at Chicago. The grain moves into Sandusky upon local rates, and when it is reshipped east, a new waybill is issued at the whole through rates, the charges inbound being refunded.

GEORGE A. HOGGE.

STATE OF ILLINOIS,
County of Cook:

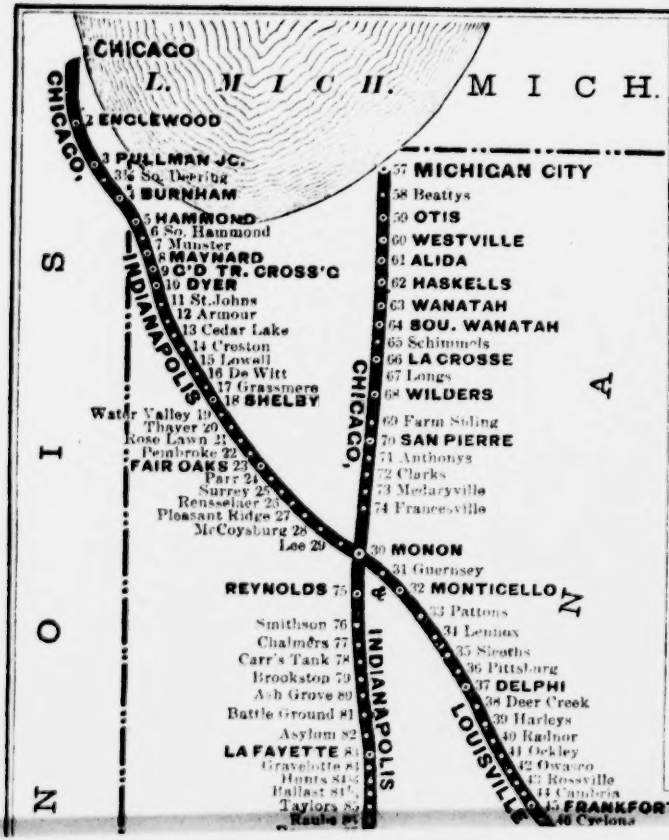
Personally appeared before me William C. Renstrom, a Notary Public in and for said State and County, George A. Hogge, the above named affiant, who made oath that the facts stated in his foregoing affidavit are true.

Witness my hand and official seal, this 16 day of Dec. 1909.

My commission expires the 29th day of Dec., 1910.

[SEAL.] WILLIAM C. RENSTROM.
Notary Public.

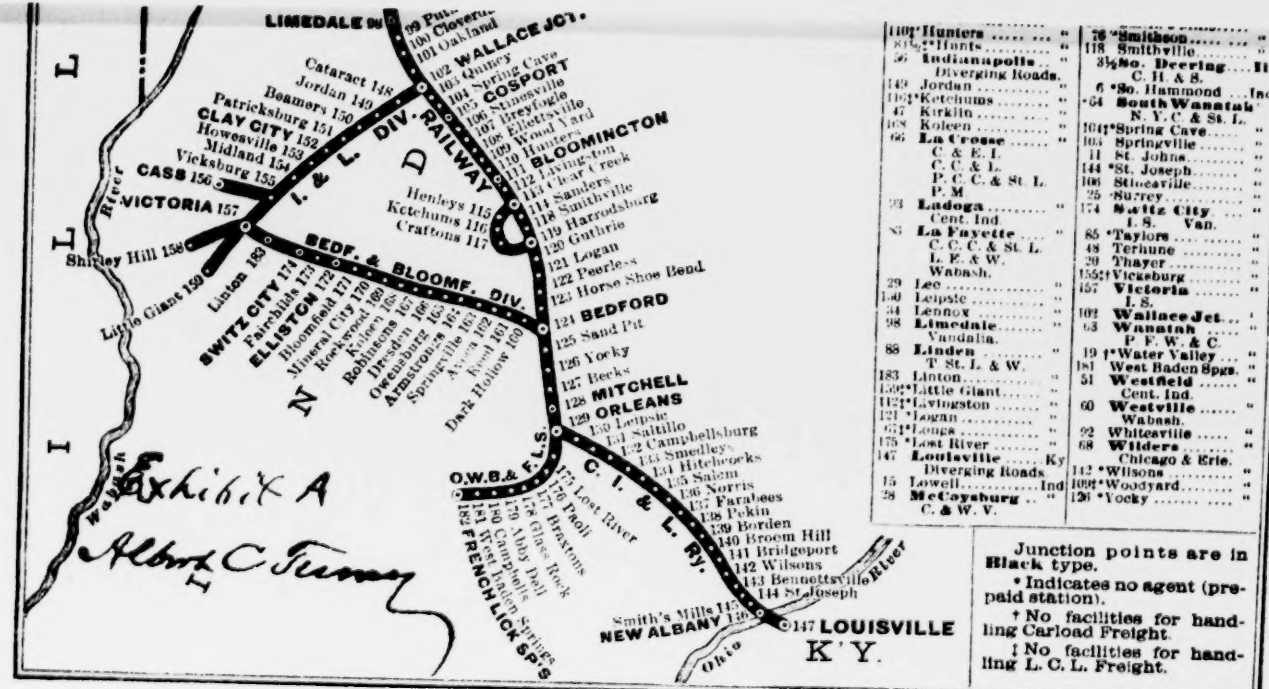
(Here follows map marked page 123.)



STATIONS ON
CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY CO.
MONON ROUTE

INDEX TO STATIONS AND NUMBERS.

No.			No.			No.		
179	Abby Dell	Ind	69	*Cherry Grove	Ind	8	*Maynard	Ind
61	Alida	"	1	Chicago	Ill		P. C. C. & St. L.	
	B. & O.			Diverging Roads.		73	Medaryville	"
71½	*Anthonys	"	72½	*Clarks	Ind	57	Michigan City	"
12½	*Armour	"	152	Clay City	"		L. E. & W.	
164	*Armstrongs	"		E. & I.			M. C. P. M.	
80	*Ash Grove	"	113	Clear Creek	"	154½	*Midland	"
82	*Asylum	"	109	Cloverdale	"	150	Mineral City	"
162	*Avona	"	117½	*Crafton	"	128	Mitchell	"
96	Bainbridge	"	50	Crawfordsville	"		B. & O. S. W.	
84¾	*Ballast	"	90½	*Crawf'sv'e Jt.	"	30	Monon	"
81	Battle Ground	"		C. C. C. & St. L.		92	Monticello	"
150	*Beemers	"		Vandalia.			P. C. C. & St. L.	
58	*Beattys	"	14	Creston	"	7½	*Munster	"
127½	*Becks	"	46	*Cyclone	"	146	New Albany	"
124	Bedford	"	100	*Dark Hollow	"		Diverging Road	
	B. & O. S.-W.		38½	*Deer Creek	"	53	*Nora	"
	So. Ind.		37	Delphi	"	136	Norris	"
143	*Bennettsville	"		Wabash.		101	*Oakland	"
171	Bloomfield	"	16	*De Witt	"	41	Ockley	"
	I. S.		166	*Dresden	"	139	Orleans	"
111	Bloomington	"	10	Dyer	"	9	Otis	
	I. S.			E. J. & E.			L. S. & M. S.	
39	Borden	"		M. C.		42	Owasco	"
175½	*Braxtons	"	108	Ellettsville	"	165	Owensburg	"
103½	*Brevfogle	"	172	Elliston	"	176	Paoli	"
141	*Bridgeport	"		E. & I.		24	Parr	"
54	Broad Ripple	"	2	Englewood	Ill	151	Patricksburg	"
79	Brookston	"	178½	*Fairchilds	Ind	33	*Pattons	"
140	*Broom Hill	"	55	*Fair Grounds	"	122	*Peerless	"
1	Burnham	Ill	23	Fair Oaks	"	138	Pekin	"
44	Cambria	Ind		C. & E. I.		22	*Pembroke	"
150½	*Campbells	"	137	Farabees	"	83½	*Pittsburg	"
152	Campbellsburg	"	97½	*Farm Siding	"	27	Pleasant Ridge	"
52	Carmel	"	74	Francesville	"	31½	*Pullman Junc.	Ill
15	Carpentersville	"	45	Frankfort	"		Diverging Roads.	
78	*Carr's Tank	"		L. E. & W.		99	Putnamville	Ind
156½	*Cass	"		T. St. L. & W.		103	Quincy	"
	I. S.			Vandalia.		40	Radnor	"
148	Cataract	"	182	Fr'ch L. & Spgs.	"	86	Raube	"
15	Cedar Lake	"		Sou. Ry.		161	Reed	"
77	Chalmers	"	178	*Glass Rock	"	26	Rensselaer	"
			105	Gosport	"	75	Reynolds	"
				Vandalia.			P. C. C. & St. L.	



110‡	Hunters	"
81½	*Hunts	"
56	Indianapolis	"
	Diverging Roads.	
149	Jordan	"
165‡	*Ketchums	"
47	Kirklin	"
168	Koleen	"
66	La Crosse	"
	C. & E. I.	
	C. C. C. & L.	
	P. C. C. & St. L.	
	P. M.	
93	Ladoga	"
	Cent. Ind.	
87	La Fayette	"
	C. C. C. & St. L.	
	L. E. & W.	
	Wabash.	
29	Lee	"
150	Leipsic	"
34	Lennox	"
98	Limedale	"
	Vandalia.	
88	Linden	"
	T. St. L. & W.	
183	Linton	"
159‡	*Little Giant	"
122‡	*Livingston	"
121	*Logan	"
65‡	*Longs	"
175	*Lost River	"
147	Louisville	Ky
	Diverging Roads.	
15	Lowell	Ind
38	McCaysburg	"
	C. & W. V.	

76	*Smithson	"
118	Smithville	"
3½	So. Beering	Ill
	C. H. & S.	
6	*So. Hammond	Ind
64	South Wanatah	
	N. Y. C. & St. L.	
104‡	*Spring Cave	"
105	Springville	"
11	St. Johns	"
144	*St. Joseph	"
106	Stinesville	"
25	*Surrey	"
174	Switz City	"
	I. S. Van.	
85	*Taylors	"
48	Terhune	"
20	Thayer	"
155‡	†Vicksburg	"
157	Victoria	"
	I. S.	
102	Wallace Jct.	"
63	Wanatah	"
	P. F. W. & C.	
19	†*Water Valley	"
181	West Baden Spgs.	"
51	Westfield	"
	Cent. Ind.	
60	Westville	"
	Wabash.	
92	Whitesville	"
68	Wilders	"
	Chicago & Erie.	
142	*Wilsons	"
103‡	*Woodyard	"
120	*Yocky	"

Junction points are in Black type.

* Indicates no agent (prepaid station).

† No facilities for handling Carload Freight.

‡ No facilities for handling L. C. L. Freight.

124 47

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT B.

Interstate Commerce Commission,
Washington.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of orders entered by the Commission September 26, 1908, August 2, 1909, December 11, 1909, March 7, 1910, June 3, 1910, June 29, 1910, July 18, 1911, and August 23, 1911, in the case of W. S. Duncan & Company and others against the Nashville, Chattanooga & St. Louis Railway and others, docket No. 1698, the originals of which are now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission this 25th day of November, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS,
Chairman.

125 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 26th Day of September, A. D. 1908.

Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Petition for Intervention.

Upon consideration of the record in the above-entitled case and pursuant to motion made for that purpose by Mr. Luke Lea, on behalf of and as attorney for the Nashville Grain Exchange, of Nashville, Tenn., and Nashville Board of Trade of said Nashville:

It is ordered: That said Nashville Grain Exchange and said Nashville Board of Trade be, and they are hereby, granted leave to intervene in said case, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of said case.

It is further ordered: That a copy of this order be served upon each of the parties to said case.

126 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 2nd Day of August, A. D. 1909.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

In this case, application by petition on file, supported by affidavits on file, having been made by the Nashville Grain Exchange to have the order heretofore entered in this cause on the 24th day of June, 1909, notifying and requiring the defendant railroads to cease and desist on or before the first day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per hundred pounds, or any other sum, as an allowance for compensation for services rendered in the elevation, unloading or handling of grain and grain products at Nashville;
127 and also notifying and requiring the defendant railroads to cease and desist, on or before the first day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products and hay at Nashville, the privilege of reshipping or rebilling said products from Nashville, as particularly described in the report of the Commission therein referred to,—so altered and modified as to provide that the first day of January, 1910, instead of the first day of September, 1909, shall be the date on or before which the defendant railroad companies shall cease and desist from paying the allowance and permitting the practice and privilege above indicated; and the Commission on the day hereof having considered said application;

It is ordered; That said order of the 24th day of June, 1909, be and the same is hereby so altered and modified as to provide that in lieu of the first day of September, 1909, the first day of January, 1910, shall be the date on or before which said order discontinuing the allowance of the charges and the granting of the privileges of reshipping or rebilling at Nashville, as above indicated upon the basis and in the manner set forth in the report and findings of the Commission in said case shall be operative and effective.

It is further ordered; That a copy of this order be served upon each of the parties to said case.

A true copy.

[Seal Interstate Commerce Commission, 1887.]

E. A. MOSELEY, *Secretary.*

128 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 11th Day of December, A. D. 1909.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Upon consideration of the record in the above entitled case,

It is ordered, That the order heretofore entered in this case, and by its terms made effective on September 1, 1909, but afterwards so modified as to become effective January 1, 1910, be, and it is hereby, so further modified as to become effective April 1, 1910, instead of January 1, 1910.

It is further ordered, That a copy of this order be served upon each of the parties to said case.

A true copy.

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY, *Secretary.*

129 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of March, A. D. 1910.

Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al.

Upon consideration of the record in the above-entitled case:

It is ordered: That the effective date of the order entered in the above cause on June 24, 1909, and afterwards extended to April 1, 1910, be, and the same is hereby, postponed indefinitely.

130 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 3rd Day of June, A. D. 1910.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Whereas, on June 24, 1909, the Commission in the above entitled cause, after complaint and full hearing, made and entered its order therein, as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the day hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the Commission having found in said report that the granting to dealers at Nashville, Tennessee, certain so-called elevation allowances is unduly discriminatory, and, further, that the privilege of reshipping hay, grain, and grain products from Nashville is unlawful, and gives undue and unreasonable preference and advantage to dealers in hay, grain, and grain products located at Nashville, and subjects complainants to undue and unreasonable prejudice and disadvantage, which elevation allowances and reshipping privilege have been more particularly described in the report made and filed in this case,

131 "It is ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per 100 pounds or any other sum as an allowance or compensation for service rendered in the elevation, unloading, or handling of grain, grain products, and hay at Nashville.

"It is further ordered, That the above defendants be, and they severally, are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products, and hay at Nashville the privilege of re-shipping or rebilling said products from Nashville, as particularly described in the report herein.

"And it is further ordered, That tariffs withdrawing said allowance may be effective upon three days' notice to the public and the Interstate Commerce Commission given in the manner required by law, and must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case."

And whereas, the effective date of said order was postponed, first

until January 1, 1910, and again until April 1, 1910, and finally until further order of the Commission, which postponements were made for the purpose of holding the order in abeyance so far as it related to transit and reshipping privileges and practices at Nashville Tennessee, in connection with the transportation of grain and hay, until the completion of an investigation by the Commission into practices of this sort and the announcement of its conclusions based upon such investigations, in order that such modification of, or addition to, said order as might be necessary to prevent unjust discrimination as between places with respect to such transit
132 privileges and practices, might be made upon the completion of the investigation aforesaid.

And whereas, that investigation has been concluded and the views of the Commission with respect to the privileges and practices in question have been announced in the report therein, entitled, "In re Substitution of Tonnage at Transit Points",

The defendant carriers in this case are hereby notified and required to show cause before the Commission at Washington, D. C., at 10 o'clock, A. M., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. v. Nashville, Chattanooga & St. Louis Railway and others, heretofore referred to, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating, in any respect whatever, between Nashville and Atlanta and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products and hay, upon the ground that such discrimination is undue, unreasonable and unlawful,

It is ordered, That a copy of this order be forthwith served upon each of the parties to this case.

A true copy:

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY,
Secretary.

133 At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 29th Day of June, A. D., 1910.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Upon consideration of the record in the above-entitled cause, the Commission upon its own motion, for the purpose of correcting a

clerical error, amends the order of the Commission entered herein on the 3rd day of June, 1910, by striking out the last paragraph but one and substituting in lieu thereof the following:

It is ordered: That the defendant carriers in this case are hereby notified and required to show cause before the Commission at Washington, D. C. at 10 o'clock A. M., on the 27th day of September, 1910, if any they can, why the order heretofore issued in the case of W. S. Duncan & Company et al. vs. Nashville, Chattanooga & St. Louis Railway et al., heretofore referred to, should not be changed and modified so that it will require the said carriers, defendants therein, to cease and desist from discriminating, in any respect whatever, between Nashville and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located within the State of Georgia, and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products and hay, upon the ground that such discrimination is undue, unreasonable and unlawful.

It is ordered: That a copy of this order be forthwith served upon each of the parties to this case.

A true copy:

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY, *Secretary.*

134 At a General Session of the Interstate Commerce Commission, Held at the Office, in Washington, D. C., on the 18th Day of July, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al.

Upon further consideration of the record in the above entitled case,

It is ordered, That the order heretofore entered in this proceeding and by its terms made effective August 1, 1911, be and it is hereby, so modified as to become effective on September 1, 1911, instead of August 1, 1911.

It is further ordered, That a copy of this order be served upon each of the parties to said cause.

A true copy:

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS, *Chairman.*

135 At a General Session of the Interstate Commerce Commission, Held at its Office, in Washington, D. C., on the 23rd Day of August, A. D. 1911.

Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Upon consideration of the record in the above entitled case,

It is ordered, That the order of the Commission heretofore entered in said cause on June 9, 1911, and by its terms made effective August 1, 1911, and thereafter modified so as to become effective September 1, 1911, be, and the same is hereby, so further modified as to become effective on November 1, 1911, instead of September 1, 1911.

It is further ordered, That a copy of this order be served upon each of the parties to said case.

A true copy:

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS, *Chairman.*

136 47.

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT C.

Interstate Commerce Commission, Washington.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the complaint, with exhibits filed with said complaint, in the case of W. S. Duncan & Company and others against the Nashville, Chattanooga & St. Louis Railway and others, docket No. 1698, the originals of which are now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission this 25th day of November, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS, *Chairman.*

137 Before the Interstate Commerce Commission.

W. S. DUNCAN & COMPANY et al.
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Complaint.

To the Honorable the Interstate Commerce Commission:

W. S. Duncan & Company, a partnership; A. P. Morgan Gra
Company, a partnership; J. D. Frazier & Company, a partnershi
Adams-Whitney Company, a corporation; A. L. & M. W. Fain,
partnership; J. J. & J. E. Maddox, a corporation; Charles
Caverly; R. W. Davis, doing business under the firm name of R. W
Davis & Company; A. C. Woolley & Company, a partnershi
McCord-Stewart Company, a corporation; Rogers & Harwell,
partnership, each of whom is engaged in business in the city
Atlanta, Fulton county, Georgia; F. W. Kelley Company, a corpor
tion; Deaton Grocery Company, a corporation; Dan Joseph Co
pany, a corporation; G. Y. Banks & Company, a partnership, eac
of whom is engaged in business in the city of Columbus, Muscog
county, Georgia; The Macon Grocery Company, a corporation; A.
Small & Company, a corporation; Adams Brothers Company,
corporation; Merritts & Company, a corporation; F. W. Hazlehurs
Company, a corporation; Adams & Johnston, a partnership
138 Soloman & McRae, a partnership; R. T. Birdsey & Company
a partnership; George A. McArthur, each of whom is en
gaged in business in the city of Macon, Bibb County, Georgia
People's Grocery Company, a corporation; Parker-Willis Company
a corporation; Cordele Grocery Company, a corporation, each o
whom is engaged in business in the city of Cordele, Crisp county
Georgia; Albany Grocery Company, a corporation; Tift & Peed
Grocery Company, a corporation, each of whom is engaged in busi
ness in the city of Albany, Dougherty county, Georgia; A. S
Pendleton Company, a corporation; Dalton Grocery Company,
corporation; Marion Curry, each of whom is engaged in business
in the city of Valdosta, Lowndes county, Georgia; Orr-Smith
Grocery Company, a corporation; Brandon & Dyer, a partnership
each of whom is engaged in business in the city of Dublin, Laurens
County, Georgia; Gallaher Grocery Company, a partnership, en
gaged in business in the city of Montezuma, Macon county, Georgia
Simpson Grocery Company, a corporation; J. R. Ragan, J. M
Bradshaw & Company, a partnership; George F. Chidsey and Carey
T. King, each of whom is engaged in business in the city of Rome,
Floyd county, Georgia; Talmadge Brothers, a partnership; Webb &
Crawford, a partnership; G. H. Hulme, and Epps-Wilkins Com
pany, a corporation, all doing business in the city of Athens,
Georgia, present this their complaint in behalf of themselves
and all other persons similarly situated with respect to the
subject and subject-matter of this complaint, and the localities

in which they do business, and in behalf of the public affected
139 by the advance in rates hereinafter complained of against The Nashville, Chattanooga & St. Louis Railway, The Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Atlanta, Birmingham & Atlantic Railroad Company, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama Great Southern Railroad Company, Georgia Southern & Florida Railway Company, Illinois Central Railroad Company, Central of Georgia Railway Company, Saint Louis & San Francisco Railroad Company, Seaboard Air Line Railway Company, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, as receivers thereof; Atlanta & West Point Railroad Company, and Western Railway of Alabama; and thereupon complainants respectfully show as follows, to wit:

I.

Complainants are severally engaged in business in the respective cities above named as wholesale dealers in groceries, food products, and like commodities, which commodities are purchased in States other than Georgia, and are transported from such States to complainants in the State of Georgia.

II.

The defendant railway companies, and each of them, are common carriers engaged in the transportation of commodities and
140 articles of interstate commerce, including the transportation of grain, flour, grain products, hay, and meats, and other commodities, from Ohio and Mississippi River crossings, Nashville, Tennessee, and points made with relation thereto, to southeastern points of destination.

III.

Under the adjustment of rates and the rules and regulations of the carriers relating to the transportation of grain, grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, complainants and others similarly situated and the localities in which they do business are unjustly discriminated against in favor of Nashville, Tenn. By means of what is known as the rebilling privilege, with its incidents, Nashville enjoys an undue preference and advantage in the handling of the commodities named over all cities in southeastern territory, including those within the State of Georgia represented by complainants. This preference is made more effectual to Nashville and more discriminatory against other cities because of the fact that grain and grain products move only under an any quantity rate, there being no differential between car lots and less than car lots, so that Nashville by reason of this double advantage can and does deliver grain and grain products in southeastern territory under such favorable rates of freight as that cities within that territory cannot enter into profitable competition.

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IV.

Complainants charge that the privilege of rebilling as allowed and practiced at Nashville operates as an unjust discrimination against Atlanta, Macon, Columbus, and other cities in Georgia, and is an unlawful device whereby the charge for transportation service is lessened and Nashville is given an undue preference and advantage, in violation of the Act to Regulate Commere and the amendments thereto.

Complainants say upon information and belief that the method adopted is substantially as follows: On grain, grain products, and hay, moving from Ohio and Mississippi River crossings and points related thereto to Nashville, the shipper is required to pay the full local rate. If the shipment originates beyond the river the local to the river must be paid. Upon the arrival of the commodity at Nashville it may be inspected and graded and divided into numerous small consignments and reshipped from the tracks to various points in southeastern and Carolina territory. If the commodity is grain it may be transferred to an elevator, the elevation charge of one-half cent a bushel, equal to about three-quarters of a cent per hundred pounds, which includes receiving from car, weighing, storage, and hauling out when ordered, being paid by the railway company; and such grain, or other grain of like grade, may be rebilled and reshipped within ten days without any cost to the shipper, or upon the payment of storage charges the grain, or other like grain, may be reshipped at any time within six months.

142 When it is desired to reship either of the commodities so received or any part thereof, the shipper presents to the agent of the railway company his paid expense bill and receives in cash from the railway company the proportion accruing to the lines west of Nashville out of the through rate from the point at which the transit of the property began to final destination, to be shown on the way bill from Nashville as advance charges. There is also refunded to the shipper through the freight claim department the difference between the rate paid from the point at which the transit of the property commenced and the proportion west of Nashville of the through rate from such point to final destination. Bills of lading for the commodities reshipped are issued by the railway company at Nashville at the rates in effect from the point at which the transit of the property originally began to final destination, thereby protecting the through rate from the original point of shipment.

The result of this method is that the Nashville dealer may ship a carload of grain from a river crossing to Nashville, have it elevated with an opportunity to inspect, grade, mix, and sack, and then reship in smaller consignments to Atlanta, Macon, Columbus, Albany, Rome, Athens, and other cities in Georgia, at as low a rate of freight as the dealer in either of these Georgia cities can have transported the same commodity from the river crossing direct to the particular city on a through bill in carload lots. Not only may the Nashville dealer thus ship to Atlanta and other Georgia

143 cities proper at as low a rate as the jobber in those cities can ship on a through bill, but he can and does deliver

at common and junction points in Georgia at a lower rate than any dealer in either of the Georgia cities can do. Thus the dealer in Nashville can purchase a carload of grain in Louisville, and after inspecting, grading, mixing, and sacking in Nashville can rebill to Griffin, Ga., at a total charge of 29 cents per hundred pounds. The Atlanta dealer is required to pay the rate from Louisville to Atlanta, amounting to 24 cents a hundred pounds, and in addition thereto, the local from Atlarta to Griffin, 8 cents, making a total of 32 cents, so that the Atlanta dealer is required to pay three cents a hundred pounds more on grain and its products transported to Griffin from the same point of origin. In like manner Nashville may deliver in Newnan and other common or junction points in Georgia at a less rate of freight than can Atlanta. The same relation of rates *apply* in similar manner to all other cities in Georgia. Nashville can deliver in Milledgeville cheaper than Macon, in Dawson cheaper than Columbus, in Elberton cheaper than Athens or Augusta. And so with respect to each of the other cities within the State. The effect of this adjustment is to deprive Georgia cities of the ability to compete with Nashville within contiguous territory in the State of Georgia, and enables Nashville to compete in the Georgia cities proper with the wholesale dealers and jobbers in those cities. This advantage in favor of Nashville is not due to the ability of the Nashville merchant to purchase the commodity at point of production cheaper than can the Georgia dealers, or to superior business acumen, but is wholly attributable to the more favorable charges and undue preference accorded Nashville through the privilege of rebilling, and by means of the any quantity rate.

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Complainants submit that their right to trade in the territory immediately adjacent and naturally belonging to their respective cities may not lawfully be destroyed by the carriers, so as to give to the city of Nashville a practical monopoly of markets in a relatively distant territory; and complainants say that this is accomplished when Nashville can deliver grain and grain products in single packages to retailers or consumers at junction or common points in Georgia at a less rate of freight per hundred pounds than the wholesale dealer in any Georgia City can make delivery of the same commodity at the same point in carload lots.

Complainants further show that the privilege of rebilling as established and practiced at Nashville is further unlawful in this, to wit: When a shipment originating on or beyond the Ohio or Mississippi River is billed to Nashville at the local rate and is there received, the movement is terminated and cannot constitute any part of a through movement to a point east of Nashville, to which the commodity or its substitute or any part thereof may be rebilled and reshipped. Complainants are advised that in point of law as well as in fact the shipment from the west to Nashville and the subsequent shipment on new bills from Nashville to final destinations east thereof is each a separate and independent movement and cannot be construed as constituting such a through movement as entitles the shipper at Nashville to receive or the carrier to

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allow the benefit of the through rate from the point west of Nashville to various final destinations. Complainants are further advised, and hence say, that an indispensable element in every through shipment is a contract or agreement for such through service; an agreement between the parties at the inception of the carriage that the freight shall be transported to the point of destination at the through rate. Complainants further submit that even if the rebilling as practiced at Nashville was otherwise lawful, it amounts to an unjust discrimination against Atlanta and other Georgia cities, and a like privilege should be extended to Atlanta and to such other Georgia cities as may show themselves reasonably entitled thereto; or if the practice is unlawful, as complainants charge that it is, it should be abolished at Nashville. Complainants further submit that the payment by the railway company of the elevation charge at Nashville, which includes receiving from car, weighing, storing for ten days, and hauling out, is an unlawful advantage, in that it lessens the cost of the service performed by the carrier, and results in a direct commercial benefit to the shipper at the expense of the carrier, and while not a direct payment of a rebate falls equally under the condemnation of the Act to Regulate Commerce and its amendments.

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V.

Not only does the any quantity rate on grain and grain products from Ohio and Mississippi crossings, Nashville, Tenn., and points related thereto, to southeastern destinations, afford to Nashville, having the rebilling privilege, the opportunity of successfully invading the territory in and around the several Georgia cities as hereinabove shown, but complainants and other car-lot shippers are entitled as a matter of right and justice to a fair and reasonable differential. Complainants submit that rates should be adjusted with reference to the cost and value of the service—that is to say, the cost of the service to the carrier and the value of the service to the shipper and trader. The carrier is entitled to maintain a compensatory charge for the service rendered, while the shipper and trader is entitled to a rate that will enable him to conduct the business with a fair margin of profit.

The difference in the cost of the service to the carrier between shipments in car lots and less than car lots is such as to demand the establishment of a reasonable differential. Where the shipment is made in less than car-lot quantities a separate receipt or bill of lading is to be given to every shipper for his parcel. A separate entry of every item is to be made on the way bill. The shipment is usually made by local freight trains with frequent stops. The freight is to be taken out in parcels and delivered to each separate consignee. The freight is loaded and unloaded by the rail-
147 road company. There are as many collections of charges for freight as there are different parcels. With respect to car-lot shipments goods are loaded by the consignor and unloaded by the consignee without cost to the carrier. The car is sealed by the consignor and broken by the consignee at destination, thus relieving the carrier of liability for loss or shortage.

The car is moved on through trains, and is therefore more economically handled. Thus when flour is purchased in car lots it is loaded by the milling company out of their warehouse into a car by their own employees and at their own expense is transferred to destination under the mill seals and placed on the tracks of the dealer. He breaks the seals and bears at his own expense all terminal costs of handling and unloading into his warehouse. The carrier is not responsible for shortage or for errors of loading or unloading clerks. Another dealer will buy an equal amount of flour, say 200 barrels, and ship it in five-barrel lots, making 40 shipments, each of which must be checked into the depot and loaded at the point of shipment, transferred en route to destination, unloaded and checked out by the depot agent at destination; separate way bill and freight bill are made for each shipment; separate checks are required at destination, and all of these must be checked and rechecked by auditors and accountants, thus involving forty times as much clerical work as the same quantity of flour shipped in car lots. The handling and rehandling of less than car-lot shipments subjects the carrier to damage, loss, shortage, and delays, involving service and expense to the claim department of the carrier.

148 Complainants show upon information and belief that this difference in the cost of the service between shipments in car lots and less than car lots is generally recognized by the carriers. In the southern territory differentials apply on grain and grain products to Mississippi Valley and Western Tennessee junction points. From Cincinnati to Hattiesburg and Laurel, Miss., there is a differential of 13½ cents on flour in sacks and barrels, straight or mixed, 30,000 pounds C. L. minimum. From Louisville the differential is the same. From Nashville the differential is 10½ cents. From Cincinnati to Jackson and Meridian, Miss., the differential on grain, barley, oats and rye is 7½ cents; on bran, cornmeal, feed, etc., it is the same; on flour 7 cents. Relative differentials are allowed from Louisville and from Nashville. Similar differentials are allowed from Ohio River crossings and Nashville to other Mississippi points. In official classification territory differentials are allowed on grain and grain products, as shown by Exhibit A attached hereto, and in Western Classification territory similar differentials are allowed, as shown by Exhibit B hereto, to which exhibits leave of reference is prayed. In Southern Classification territory differentials are allowed on fertilizers, lumber, food preparations, salt, sugar, molasses and syrup, and various other commodities.

Wherefore complainants submit that the failure and refusal of the carriers to establish and maintain a differential on grain and grain products moving from Nashville and the Ohio and

149 Mississippi River gateways to southeastern territory is unreasonable, unjust, and discriminatory, in violation of the Act to Regulate Commerce and the amendments thereto; and complainants respectfully submit that five cents a hundred pounds would constitute a reasonable differential between such shipments in car lots and less than car lots.

Complainants in behalf of themselves and others similarly situ-

ated, and of the localities in which they do business, respectfully pray:

First. That the defendants, The Nashville, Chattanooga & St. Louis Railway, The Atlantic Coast Line Railraod Company, Louisville & Nashville Railroad Company, Atlanta, Birmingham & Atlantic Railroad Company, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Alabama Great Southern Railroad Company, Georgia Southern & Florida Railway Company, Illinois Central Railroad Company, Central of Georgia Railway Company, Saint Louis & San Francisco Railroad Company, Seaboard Air Line Railway Company, and S. Davis Warfield, R. Lancaster Williams, and E. C. Duncan, as receivers thereof; Atlanta & West Point Railroad Company, and Western Railway of Alabama, and each of them, be required to answer the charges herein, and that after due hearing and investigation an order or orders be issued commanding the defendants and each of them to wholly cease and desist from each and every of the violations of the said Act to Regulate Commerce, and particularly from continuing to allow to the city of Nashville and to shippers therein the unlawful practice known as the rebilling privilege.

150 Second. That this Honorable Commission will ascertain and declare what is a fair and reasonable differential between shipments in car lots and shipments in less than car lots of grain and grain products from Ohio and Mississippi River crossings, Nashville, Tenn., and points related thereto, to southeastern destinations, and will issue an appropriate order commanding and requiring the defendants hereto and each of them to establish and maintain such reasonable differential.

Third. That such other and further order or orders may be issued as the Commission may deem necessary in the premises or complainants' cause may appear to require.

WIMBISH, WATKINS & ELLIS,
Solicitors for Complainants, 525 Prudential Building,
Atlanta, Ga.

151 EXHIBIT A.

Official Classification No. 32, I. C. C., O. C. 32, Effective July 1, 1908.

Page 61,
Item 34. Flour, N. O. S.:

NOTE 1.—Flour, in packages weighing less than 10 lbs. each, will not be accepted for transportation.

NOTE 2.—Half bbls. (not half bbl. sacks) estimated at 100 lbs. each.

In bulk in bbls.:

	Class, L. C. L.	Class, C. L.
Quantities less than 200 bbls., estimated at 200 lbs. per bbl. (see Note 2)	5	..
Quantities of 200 bbls. and over, estimated at 200 lbs. per bbl. (see Note 2)	..	6

In cotton, jute or paper packages (see Note 1):

Packed in boxes or bbls. (C. L., min. weight, 40,000 lbs.)	4	5

Loose:

In quantities less than 40,000 lbs.	5	..
In quantities of 40,000 lbs. and over	..	6

Page 78,
Item 3. Grain and Grain Screening:

NOTE 1.—On shipments subject to this note, if marked capacity of car is less than 40,000 lbs., the minimum weight will be the marked capacity of the car, but in no case less than 30,000 lbs.

NOTE 2.—On shipments subject to this note, if marked capacity of car is less than 35,000 lbs., the minimum weight will be the marked capacity of the car, but in no case less than 30,000 lbs.

152 Barley:

Not sprouted:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs., not taken.		
In bulk, 20,000 lbs. and over, and less than 40,000 lbs.	5	..
Min. weight, 40,000 lbs. (subject to Note 1.)	..	6

Item 6. Corn. N. O. S.:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs., not taken.		
In bulk, 20,000 lbs. and over, and less than 40,000 lbs.	5	..
Min. weight, 40,000 lbs. (subject to Note 1)	..	6

Item 7. Oats:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs., not taken.		
In bulk, 17,000 lbs. and over, and less than 35000 lbs.	5	..
Min. weight, 35,000 lbs. (subject to Note 2)	..	6

Official Classification, No. 32, I. C. C., O. C. 32, Effective July 1, 1908.

Page 78,
Item 8. Rye. N. O. S.:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs., not taken.		
In bulk, 20,000 lbs. and over, and less than 40,000 lbs.	5	..
Min. weight, 40,000 lbs. (subject to Note 1)	..	6

153 Item 10. Wheat. N. O. S.:

In sacks or bbls.	5	..
In bulk, less than 20,000 lbs. not taken.		
In bulk, 20,000 lbs. and over, and less than 40,000 lbs.	5	..
Min. weight, 40,000 lbs. (subject to Note 1)	..	6

Page 81,
Item 5. Hay, pressed in bales (C. L., min. weight, 20,000 lbs.):

(Subject to Rule 27)	1	5

EXHIBIT B.

Western Classification, No. 44, I. C. C., No. 2, Effective May 1, 1908.

Page 27.
Item 10. Cereals and Cereal Products:

Bran or Shorts:

In bags	4	B
In bulk	..	

Item 44. Corn Meal, Brewers' Corn Meal, Grits and Hominy:

In paper sacks	3	5
In cotton sacks	4	
In barrels or boxes	4	

154 Item 56. Feed, N. O. S., including Clover Meal, Gluten Meal, Ground Alfalfa, Corn Germ, and Corn Germ Feed:

In bags	4	B
In bulk	..	

Item 61. Flour, N. O. S., including Flourine in Jute Sacks, Self-Rising or Pancake Flour, and Semita:

In cotton sacks or in boxes, actual weight	4	5
In paper sacks, actual weight	3	
In pails, covers well secured	4	
In barrels, 200 lbs. per bbl. (exception to Rule 1)	4	

Page 28.
Item 10. Grain, N. O. S.:

In bags, boxes, or barrels	4	B

Grain Screenings:

In bags	4	B
In bulk	..	

Item 16. Kaffir Corn:

In bags, boxes, or barrels	4	B
In bulk	..	
Min. weight 24,000 lbs.		

Page 63.
Item 3. Hay and Straw:

Flax Straw	..	C
Hay and Cane Fodder and Dried Corn Stalks (corn on):		
Baled, but not pressed	1½	
Baled and pressed	3	
Min. weight 20,000 lbs.		

(Endorsed:) Interstate Commerce Commission. W. S. Duncan & Co. et al., vs. Nashville, Chattanooga & St. Louis Ry. et al. Complaint. Wimbish, Watkins & Ellis, Solicitors for Compl'ts.

155 47. 35.

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT E.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached and entitled Report and Order of the Commission are true copies of the originals now on file in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this twenty-fifth day of November, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS, *Chairman.*

156 Certified Copy.

Opinion No. 1026.

Before the Interstate Commerce Commission.

No. 1698.

W. S. DUNCAN & COMPANY et al.

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al.

Decided June 24, 1909.

Report and Order of the Commission.

157 No. 1698.

W. S. DUNCAN & COMPANY et al.

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY et al.

Submitted February 25, 1909. Decided June 24, 1909.

1. The payment of the so-called "elevation allowance" to dealers in hay, grain, and grain products at Nashville, Tenn., is an undue and unlawful discrimination.

2. Where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads, and further, to

cut off consumers and small dealers from purchasing at distant markets in less-than-carload lots.

3. Shipments of grain, grain products, and hay are carried from the Ohio and Mississippi River crossings and points north and west thereof to Nashville at local rates, and quantities of these articles are afterwards reshipped and rebilled from Nashville to points in the southeast at the local rate, but the difference between the sum of the locals thus collected and the through rate from crossing point to ultimate destination is refunded to the shipper through the claims department of the railroad company. There is no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Nashville is named, and upon delivery of grain to that point it loses its identity and is in every respect a local shipment; Held, That the circumstances and conditions prevailing at Nashville are not so dissimilar from those prevailing at other points in the southeast as to warrant a continuance of this privilege at Nashville without undue discrimination, to the prejudice and disadvantage of points in that territory not having a similar privilege; Held further, That this privilege operates as a device by which traffic may move at less than the lawful tariff rate.

Wimbish, Watkins & Ellis for complainants.

S. F. Andrews for Nashville, Chattanooga & St. Louis Railway Company; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway, and S. Davies
158 Warfield, R. Lancaster Williams, and B. C. Duncan, receivers thereof; Atlanta & West Point Railroad Company; Western Railway of Alabama, and the Southern Railway Company.

Perkins Baxter for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

Luke Lea for Nashville Grain Exchange and Nashville Board of Trade, of Nashville, Tenn., Interveners.

Report of the Commission.

CLEMENTS, *Commissioner:*

This complaint is brought by a large number of commercial houses located at Atlanta and other Georgia cities who allege that the carriers have granted to Nashville, Tenn., through the adjustment of rates, rules, and regulations, undue preference and advantage in the handling of grain and grain products, and hay from Ohio and Mississippi River crossings and beyond to southeastern destinations, and thereby unjustly discriminate against complainants, and others similarly situated, in that Nashville is able to deliver grain and grain products in southeastern territory under such unduly preferential rates and privileges that cities within that territory can not enter into competition.

The practices of the carriers complained of are:

(*a*) The payment by the railway companies of elevation charges at Nashville.

(*b*) The application of the any-quantity rate on grain and grain products from Ohio and Mississippi River crossings and Nashville, and points related thereto, to southeastern destinations.

(*c*) What is known as the rebilling or reshipping privilege at Nashville, with its incidents.

The Nashville Grain Exchange and the Nashville Board of Trade have intervened in this case in support of the retention at Nashville of these privileges.

Elevator Allowance.

In connection with the reshipping of grain at Nashville, there is an allowance of three-fourths of a cent per 100 pounds by the railroad companies in payment for so-called elevation. The record shows that the practice at Nashville is to pay this allowance not only for elevation, but in effect for unloading the grain in such manner as may be most convenient for the dealer. The latter is paid this allowance for grain unloaded or sacked at his store or warehouse, irrespective of whether there is any elevation involved or whether the sacking is done by hand or by machinery, when the shipment moves out of Nashville.

159 The present adjustment of defendants' rates from Ohio and Mississippi River crossings to points of ultimate destination in the Southeast is made up of a combination of the through rate from the crossings to a jobbing point, such as Atlanta, plus the local from Atlanta. To certain circumscribed territory a dealer at the Georgia jobbing point can purchase a car of grain at a crossing point, bring it to Atlanta and ship it on to his customer at the same through rate as would be applied to a similar shipment by a dealer at a crossing point, or at Nashville. This equality in cost, however, relates only to the transportation charges, and is also restricted to a comparatively limited number of points. It would be impracticable for an Atlanta dealer to send a car through even to these points without stopping it at Atlanta for the purpose of inspection, sacking, etc., and it is partly in connection with certain incidental charges that he is placed at a disadvantage with a crossing point or Nashville. The Atlanta dealer does not receive any elevation allowance as does the Nashville dealer, and in addition, after unloading the car at his own expense, is required to pay certain switching charges.

Elevation allowances such as are paid at Nashville have been considered by the Commission on several occasions and we have found that there was no way of controlling the evils and irregularities necessarily accompanying such allowances, and for that reason they have been condemned. Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. Rep., 90; Traffic Bureau Merchants' Exchange v. C., B. & Q. R. R. Co., 14 I. C. C. Rep., 317. It does not appear that the practice as carried on at Nashville is different in any essential particular from that which we held to be illegal in the cases just referred to, and it can not be doubted that it constitutes an unlawful discrimination against the complaiants, who are compelled to perform a

similar service at their own expense. An order will therefore be issued prohibiting the carriers from further paying this so-called elevator allowance.

Any-quantity Rate.

It appears from the record that throughout the country generally a different rate is applied on carloads from that applied on less than carloads in the transportation of traffic of the character involved in this complaint. There is an exception to this in what is known as Southern Classification territory, where the any-quantity rate prevails. Even in this territory a differential is in effect in Mississippi and Tennessee and parts of Alabama, and in Georgia on the Western & Atlantic Railroad north of Atlanta. However, the carriers contend that these exceptions are due to competitive conditions.

Complainants request the Commission to order a differential as to carloads and less than carloads on this traffic to southeastern
160 territory, on the ground that the carload shipper is overcharged because he gets less service and pays the same money as the man who ships in less-than-carload lots; and that this violates the primary object sought to be obtained by the interstate-Commerce act; that is, equality of treatment to all shippers. This feature of the complaint is not directed against Nashville alone, but is of broader scope, and includes all movements of grain through Ohio and Mississippi River crossings to points in southeastern territory.

At the hearing considerable testimony was taken to prove that the handling of traffic in less-than-carload lots was more expensive to the carrier than handling it in carloads. Defendants admit the general truth of this proposition. However, while the Commission will take notice of this fact it must also be borne in mind that the comparative cost of services to carriers can not be made the sole basis of rate making. Planters' Compress Company v. C. C. C. & St. L. Ry. Co., 11 I. C. C., 382, 405; I. C. C. v. C. G. W. Ry. Co., 141 Fed. Rep., 1003, and cases there cited.

The matter of establishing this differential has been agitated for a long time throughout southeastern territory. The carriers at one time favorably considered putting it into effect, and did actually do so for a short period, but it was discontinued for the reason that the state commissions in several of the Southern States require the maintenance of the any-quantity rate, and therefore it was impracticable to continue a differential between carload and less-than-carload shipments of interstate traffic. The sole contention of the carriers with respect to this feature of the complaint is its impracticability, and in this connection an illustration was given to show that the adoption of a differential on interstate traffic would result in increasing the rate on such shipments in less than carloads without a corresponding increase on intrastate less-than-carload shipments as long as the state commissions require the any-quantity rate on intrastate shipments. The differential would thus discontinue the uniform application of rates to both interstate and intrastate shipments. Less-than-carload shipments from point to point in a state would continue to move on the same rates as carloads. When a state line was crossed

and the increased rate applied on the less-than-carload shipments, there would be an increase on such shipments sufficient to absolutely confine each state's business within its own borders and thus the interstate jobber would be eliminated in favor of the intrastate jobber.

There are, however, other and graver considerations with respect to this matter which exercise a compelling force upon the Commission. It is true the Commission has held that differentiation by the carriers of carloads from less than carloads in the application
161 of rates may be warranted under certain conditions. Here, however, we are asked to enter an affirmative order establishing a differential. What would be the effect upon all the business interests involved in this traffic should the Commission take such action? No doubt its effect upon the jobbers at southeastern points would be beneficial; traffic would move into the Southeast in such manner as to give the longest possible haul in carloads to the local dealers, who, securing these long hauls at carload rates, would be the beneficiaries. Other classes who would be affected by the change would be the small dealers and consumers, and it appears that the necessary operation of such a change would be to cut off these classes from purchasing in small quantities at Nashville and Ohio River points and compel them to deal with jobbers in their immediate vicinity, who would purchase in large enough quantities to secure the benefits of the lower rates on the long carload haul from the Ohio River and Nashville.

The entire record points to the fact that a differential on this traffic would have the effect of enhancing the price of these products to the consumer. The position taken by the railroads is that they have no objection to the establishment of a differential if a practical way can be found of accomplishing it, and provided the differential is brought about by an advance in the less-than-carload rates. It further appears that heretofore when this matter was agitated certain of the defendants considered it advisable to leave it to the Commission to say whether or not there should be a differential, always upon the assumption that this would be effected by an increase of the less-than-carload rates rather than by reductions of carload rates. Yet the carriers at that time admitted that they could not undertake to advance the less-than-carload rates primarily because such action would create the anomaly in the application of interstate and intrastate rates to which we have already alluded.

The record shows that consumers are now able to buy, and do buy, as cheaply in Nashville and at the river crossings as can the dealers in Atlanta; that the establishment of this differential would concentrate business at southeastern points; and it might reasonably be concluded from this that through the changes which this differential would bring about there would frequently be interposed between the consumer and his supply the profit of one or more middlemen, unless the retailer or consumer continued to buy at the larger markets, in which case he would frequently be compelled to pay the higher rate to be applied under the proposed adjustment on less-than-carload shipments.

From the facts appearing, it is clear that if a differential on this

traffic is ordered, an effort will be made to maintain the present rates upon carload shipments, and a higher rate will be made to
162 apply on less-than-carload shipments. In the event such a readjustment should be upheld the cost to the retailer and consumer would necessarily be increased.

The any-quantity rate is paid indiscriminately by all shippers in this section, and therefore there can be no valid claim of unjust discrimination between localities, nor do we understand that complainants make any such allegation. On the other hand, it is nowhere stated that the any-quantity rate is per se unreasonable. All that complainants are contending for is a differential, whether the result be an advance or a reduction of the present rates. Complainants assert that they have an inherent right to the jobbing business throughout the territory adjacent, or, as they say, "naturally tributary" to them. As one witness stated it, "the territory contiguous to Augusta belongs to Augusta, and Augusta ought to have it, and I don't think Savannah, Macon, Atlanta, or Nashville has any right to it."

A railroad can not be compelled, as prayed in this case, or even permitted to adopt a system of rate making which enables a large dealer to drive a smaller dealer out of the market. We must have some other motive upon which to act in a matter of this kind than that the trade of a particular community is a vested right belonging to any particular class in that community. We are not permitted so to narrow our view of all the interests involved as to look only to the interests of a particular class in the community, and this for the sole purpose of vesting in that class what they claim to be their inherent rights, more especially when the enjoyment thereof is to be at the expense of the community at large.

The effect of an order prescribing a differential on less-than-carload quantities would be to place a tax on retailers and consumers in order that jobbers in this southeastern territory might realize a profit in competition with Nashville jobbers. If it were merely a question of adjusting the equities between the jobbers of Nashville and complainants, this matter would be greatly simplified, but our duty requires that we consider every interest which might be affected by our order, and where it seems that action on our part would have a tendency to adversely affect the interests of the section as a whole, we are not justified in granting the relief prayed for by a comparatively small class, as in the case before us.

Rebilling and Reshipping.

Under the rebilling or reshipping privilege accorded at Nashville on shipments of grain, grain products, and hay from Ohio and Mississippi River crossings to points in the southeast the through rates from the crossings to ultimate destinations are applied. Shipments of grain from the crossings move into Nashville, where they
163 are unloaded, elevated, or sacked, and at any time within six months they are reshipped on to points in the southeast. The net freight charge for the entire movement is based on the through rate from the crossings to final destination. A shipment moving

from Evansville to Atlanta via Nashville pays the local 10-cent rate to Nashville, and the local rate of 17 cents, Nashville to Atlanta, or a total of 27 cents. As the through rate from Evansville to Atlanta is 24 cents, the 3 cents representing the difference between such through rate and the combination based on Nashville is paid back to the shipper through the claims department of the railroad company. When the shipper desires to reship at Nashville he takes the expense bill, covering the inbound movement, to the agent of the carrier, and the outbound shipments are charged against that expense bill; he thereupon gets a bill of lading showing the origin of the property at Evansville. This is the practice followed by the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis employs a substantially similar practice, the net result of which is to apply the through rate via Nashville from the river crossings to final destination.

It is claimed by defendants that reshipping at Nashville was inaugurated many years ago for the purpose of protecting the revenues of the Louisville & Nashville Railroad, the Nashville & Northwestern, and the Nashville, Chattanooga & St. Louis Railway, against the competition of boats on the Cumberland River; that the location of Nashville on the Cumberland River, a navigable stream, was sufficient to establish not only a basis of rates from the Ohio and Mississippi River crossings to Nashville and southeastern territory, but also to establish the custom of reshipping at Nashville; that the original route to the southeast consisted of boats on the Cumberland River to Nashville and the Nashville, Chattanooga & St. Louis Railway from there on. It therefore became necessary, in order to protect the revenues of the rail carriers, to either establish very low rates from Ohio River crossings to Nashville proper, or to establish reshipping arrangements at Nashville to southeastern points. By taking the latter course there was accomplished the double purpose of securing the movement of traffic destined to the southeast in competition with boats on the Cumberland River, and of protecting the revenues of the rail lines on traffic destined to Nashville proper.

The record shows that less than 1,000,000 bushels of grain were transported from Ohio and Mississippi river crossings via boat to Nashville at rates ranging from 7 to 9 cents per hundred pounds during the past season, but it was asserted that if a rate of 10 cents per hundred pounds were maintained by the rail carriers from the Ohio River to Nashville there would spring up sufficient boat tonnage to handle the entire grain traffic from the Ohio River into Nashville, destined to southeastern territory. Of course this
164 grain handled into Nashville by boat does not have the benefit of the reshipping privilege.

The complaint is that this practice of reshipping constitutes an illegal preference in favor of dealers in hay, grain, and grain products at Nashville, and against such dealers in the southeast; and furthermore that reshipping is a device by which less than the lawful rate is paid.

Atlanta dealers are at a disadvantage when it comes to engaging in business with such points as Griffin and Newnan, Ga. The

through rate from Louisville to Griffin is 29 cents per 100 pounds, while the rate to Atlanta plus the rate to Griffin is 32 cents per 100 pounds, so that if the Atlanta dealer wishes to keep the grain over in Atlanta for the purpose of inspection, weighing, sacking, etc., he is at a disadvantage of 3 cents per 100 pounds. Griffin is 43 miles south of or beyond Atlanta. The defendants claim that in cases where this cheaper rate is applicable the points that get the benefit of it have been made junction or common points by either the state railway commission or the Interstate Commerce Commission. It is not seriously urged by complainants that this adjustment is unduly preferential to these junction points or that it arose out of any other cause than advantages of location. We do not deem it necessary to enter upon any further discussion of this phase of the case.

Witnesses for complainants refer to a privilege given to shippers at Nashville of granting them ten days' free storage, and it was asserted that if grain was moved out within ten days no charge was made for storage. The defendants deny that they permit any such arrangement with shippers at Nashville, and assert that they require the discharge of cars at Nashville, just the same as they do at Atlanta and other points.

The defendants assert that Nashville does not compete with Atlanta and similar points, but being a primary grain market, competes with similar markets, such as Cairo, Evansville, and Louisville. There is much difference of opinion as to what constitutes a primary grain market.

It is maintained by defendants that there is a difference between the circumstances and conditions surrounding this traffic at Nashville, and at Atlanta and other southeastern points; that since the early days of railroads Nashville has been the gateway through which this traffic has moved into the Southeast, and her location on the Cumberland River contributed to the establishment of this gateway; moreover, that Nashville is located adjacent to a grain-growing section.

It was also contended by defendants that the practice of reshipping, as carried on at Nashville, prevails to a great extent throughout the country in connection with the transportation of grain through so-called primary grain markets. Defendants' witnesses, however, were unable to give a single instance where the conditions are the same as at Nashville with respect to the practice of reshipping or rebilling. It is true the cities located at the river crossings are able to avail themselves of the privilege of elevating grain and subsequently reshipping it on to destination points in the southeast without any increase in the transportation charge from the point of origin to point of destination. This is not due, however, to any privilege of reshipping or rebilling granted to these points, but is possible by reason of the fact that rates from points of origin to points of destination are made up of a combination based on the river. One witness did state with regard to the movement of grain into the southeast from a certain section of Illinois that the carriers shrink the rate south of Louisville 2 cents in order to equalize the rates upon similar movements through Cairo. We shall, however, confine ourselves to a discussion of the practices and privileges at Nashville and complained of in this case.

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It is contended by defendants that rebilling or reshipping is on the same basis as milling in transit and similar privileges. There is no complaint before us in this case against milling in transit, but it appears from the record that the privilege of milling in transit is accorded uniformly throughout the southeastern territory and is in no sense applied to Nashville or any other particular point alone.

We are not convinced that the circumstances and conditions under which the reshipping privilege is accorded at Nashville are so dissimilar from those obtaining at the other points involved in this traffic as to justify giving it our sanction on that ground. However, there are other aspects independent of this which lead us to regard this privilege with disfavor.

Illustrating the second feature of the complaint as to the alleged illegality of this privilege, the following example is given: A Nashville dealer buys 2 cars of grain, 1 at Memphis and 1 at Louisville. He pays, up to Nashville on a Memphis car, 11 cents per 100 pounds and on the Louisville car 10 cents. Should this Memphis car burn, after being put in the warehouse, or be sold at Nashville, he would have two expense bills and one car of grain. Should he sell a car at Atlanta, the Nashville merchant would naturally use the Memphis bill which shows a payment of 11 cents, paying the balance of the through rate from Memphis to Atlanta of 9 cents. He has, therefore, shipped the Louisville car to Atlanta for a total of 19 cents, when the through rate from Louisville to Atlanta is 24 cents and the combination of locals 27 cents. It is further alleged that as considerable grain is consumed in Nashville there is always a surplus of expense bills which may be manipulated in order to secure a cheaper rate
166 than that provided in the tariffs. In answer to this defendants say that the operation of the reshipping privilege, as described in this example, is limited by the fact that the Memphis car of grain is worth more to the dealer at Nashville than the St. Louis car, by reason of the difference in the freight rate, and, therefore, Memphis grain is not sold at Nashville proper, but is all reshipped to the southeast. It is to be noted that the tariffs of the carriers contain a rule which prohibits trading in expense bills, and it is hardly probable that such a rule would appear if the manipulation of expense bills is impossible, as contended by defendants.

While this manipulation of expense bills may not be practiced to the extent apprehended by complainants, we may remark that prohibitions of law are not invariably directed against illegal acts because they may be numerous; a statute may be considered equally necessary by the legislature to prevent sporadic or isolated acts in contravention of public policy. A practice or privilege which permits the movement of a single shipment at less than the rate lawfully applicable to such movement is one which the Commission has, under the law, no alternative but to condemn.

In considering a practice at Kansas City similar to the one under consideration (Alleged Unlawful Rates and Practices, 7 I. C. C., 240) it was found that the practice of handling grain in connection with this privilege was manifestly open to many abuses. On several occasions the Commission has considered practices of a more or less similar nature and has uniformly regarded them with disfavor. In the case

above referred to the finding was based upon the fact that the movement upon which the through rate was applied was in no essential sense a through movement, and we find the same to be true with respect to rebilling or reshipping at Nashville. The grain upon its arrival at Nashville loses its identity, and in every respect may be regarded as a local shipment. There is hardly a single incident of a through shipment involved in the transaction—the bill of lading is local, the rate is local, and there is nothing upon paper connected with the transaction indicating that the grain is to be carried beyond Nashville. If it is the intention to carry it beyond, there is no present idea as to the point of destination.

We are of the opinion that the reshipping or rebilling privilege and the application of rates thereunder obtaining at Nashville is an illegal device by means of which grain, grain products and hay may be transported at less than the tariff rate applicable thereto; and further, that it gives to Nashville undue and illegal preference and advantage and subjects other points in the southeast to unjust and unreasonable prejudice and disadvantage.

An order will be entered in accordance with the views herein expressed.

167 & 168 *Order.*

At a General Session of the Interstate Commerce Commission, Held at its Office, in Washington, D. C., on the 24th Day of June, A. D. 1909.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1698.

W. S. DUNCAN & COMPANY, A. P. MORGAN GRAIN COMPANY, J. D. Frazier & Company, Adams-Whitney Company, A. L. & M. W. Fain, J. J. & J. E. Maddox, Charles E. Caverly, R. W. Davis, of R. W. Davis & Company; A. C. Woolley & Company, McCord-Stewart Company, Rogers & Harwell, F. W. Kelley Company, Deaton Grocery Company, Dan Joseph Company, G. Y. Banks & Company, The Macon Grocery Company, A. B. Small & Company, Adams Brothers Company, Merritts & Company, F. W. Hazelhurst Company, Adams & Johnston, Solomon & McRae, R. T. Birdsey & Company, George A. McArthur, Parker-Willis Company, Cordele Grocery Company, Albany Grocery Company, Tift & Peed Grocery Company, A. S. Pendleton Company, Dalton Grocery Company, Marion Curry, Orr-Smith Grocery Company, Brandon & Dyer, Gallaher Grocery Company, Simpson Grocery Company, J. R. Ragan, J. M. Bradshaw & Company, George F. Chidsey and Carey T. King, Talmadge Brothers, Webb & Crawford, G. H. Hulme, and Epps-Wilkins Company

v.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, THE ATLANTIC Coast Line Railroad Company, Louisville & Nashville Railroad Company, Atlanta, Birmingham & Atlantic Railroad, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway, Alabama Great Southern Railroad, Georgia Southern
169 & Florida Railway, Illinois Central Railroad Company, Central of Georgia Railway Company, St. Louis & San Francisco Railroad Company, Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers; Atlanta & West Point Railroad Company, and Western Railway of Alabama; the Nashville Grain Exchange and Nashville Board of Trade, Interveners.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the day hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the Commission having found in said report that the granting to dealers at Nashville, Tennessee, certain so-called elevation allowances is unduly discriminatory, and,

further, that the privilege of reshipping hay, grain, and grain products from Nashville is unlawful, and gives undue and unreasonable preference and advantage to dealers in hay, grain, and grain products located at Nashville, and subjects complainants to undue and unreasonable prejudice and disadvantage, which elevation allowances and reshipping privilege have been more particularly described in the report made and filed in this case:

It is ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from giving or paying three-fourths of a cent per 100 pounds or any other sum as an allowance or compensation for service rendered in the elevation, unloading, or handling of grain, grain products, and hay at Nashville.

It is further ordered, That the above defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of September, 1909, and for a period of at least two years thereafter abstain, from granting to dealers in grain, grain products, and hay at Nashville the privilege of reshipping or rebilling said products from Nashville, as particularly described in the report herein.

And it is further ordered, That tariffs withdrawing said allowance may be effective upon three days' notice to the public and the Interstate Commerce Commission given in the manner required by law, and must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case.

170 47. 35.

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT F.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached and entitled Supplemental Report and Order of the Commission are true copies of the originals now on file in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this twenty-fifth day of November, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS,
Chairman.

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47.

Certified Copy.

Opinion No. 1593.

Before the Interstate Commerce Commission.

No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Decided June 9, 1911.

Supplemental Report and Order of the Commission.

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No. 1698.

W. S. DUNCAN & COMPANY et al.
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY et al.

Submitted January 10, 1911. Decided June 9, 1911.

1. In the original report and order in this case, 16 I. C. C. Rep., 590, it was found, among other things, that the reshipping or rebilling privilege permitted in the tariffs of defendants on grain, grain products, and hay at Nashville, Tenn., was unlawful, and accorded to that city undue and unreasonable preference and advantage and subjected complainant cities to undue and unreasonable prejudice and disadvantage, and the carriers were ordered to cease and desist from further permitting such transit or reshipping privilege. The order was suspended pending an investigation by the Commission, upon its own initiative, of the evils attendant upon transit privileges generally. When the report in that case was made in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, and the privilege as it had obtained theretofore at Nashville was modified in accordance with the report, a further hearing was granted in this case to ascertain whether or not the existence of the privilege at Nashville, while denied at all other points south of the Ohio River and east of the Mississippi, constituted an unreasonable preference or advantage and undue and unreasonable prejudice and disadvantage in violation of section 3 of the act to regulate commerce.

2. After further hearing and oral argument on this particular issue; Held, That the matters and things complained of herein constitute a violation of section 3 of the act to regulate commerce.

William A. Wimbish for complainants.

Perkins Baxter for Louisville & Nashville Railroad Company.

R. Walton Moore and S. F. Andrews for Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railroad Company; Seaboard Air Line Railway (S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers thereof); Atlanta & West Point Railroad Company; Western Railway of Alabama; and Southern Railway Company.

Luke Lea and Pitts & McConnico for Nashville Grain Exchange and Nashville Board of Trade, Interveners.

173 *Supplemental Report of the Commission.*

CLEMENTS, *Chairman:*

The complaint, filed in this case by the commercial interests of Atlanta and other Georgia cities, hereinafter referred to as complainant cities, is that defendants, through the adjustment of rates of transportation, rules, and practices, grant to dealers at Nashville, Tenn., undue preference and advantage in the handling of grain, grain products, and hay moving from the Ohio and Mississippi river crossings and from points north and west thereof, through Nashville to southeastern destinations. It is alleged that the result of these practices is that Nashville is able to deliver grain and grain products and hay in southeastern territory under such unduly preferential rates and privileges that dealers in complainant cities can not profitably participate in the business in competition with dealers located at Nashville.

One of the alleged discriminatory privileges complained of is the allowance at Nashville by the defendants reaching that city of three-quarters of a cent per 100 pounds in payment of so-called elevation. In its original report in this case, 16 I. C. C. Rep., 590, the Commission, following its action with regard to elevation allowances at other places, condemned the practice. The Commission has, however, in order to prevent discrimination between dealers at different places, held its order in abeyance awaiting the decision of the courts with respect to a similar allowance condemned in another case.

The petitioners further sought to have the Commission order in a lower basis of rates for this traffic in carload than in less-than-carload shipments. It was found that the carriers had for many years maintained rates on grain and grain products and hay in this territory applicable uniformly upon an any-quantity basis, and in its report, supra, the Commission refrained from interfering therewith, as it appeared to operate uniformly for all shippers, large or small, and for the traffic here involved was not unjustly discriminatory or unlawful.

The final prayer of the petition related to the practice of rebilling or reshipping, which is permitted on grain, grain products, and hay at Nashville, but which is not accorded at any other point in southeastern territory. Under this privilege grain moving through Nash-

ville may be unloaded and held not longer than six months and then reshipped on at the through rate from origin to destination instead of at the sum of the rates into and out of Nashville. This practice was described at length in the Commission's report, wherein it was condemned and an order entered requiring defendants to cease and desist from granting this privilege to dealers at Nashville. The order, however, was suspended pending an investigation by the Commission on its own motion, as to the extent and nature of
174 transit and reshipping practices and the methods followed therein, as well as the results thereof. The general matter was therefore set down for hearing in various parts of the country, and an inquiry was made by the Commission into the practices obtaining in various localities and upon many different commodities.

The purpose of the investigation was to ascertain whether these privileges and practices were attended with inherent and unavoidable opportunities for defeating the lawfully established rates, or whether they could be permitted to exist under such administrative regulation as would wholly or approximately obviate the evils attendant thereon. In its report in In the Matter of Substitution of Tonnage at Transit Points, 18 I. C. C. Rep., 280, the Commission prescribed the establishment and observance of certain rules policing the privileges and practices in such manner as to prevent the defeat of published rates at transit points established by the carriers where they were to be continued, in order that the practices and privileges might be permitted to continue if possible without the abuses incident thereto. The Commission did not upon this general inquiry condemn rebilling or reshipping as such, but held that the responsibility for safe guarding and policing them, to the end that the lawfully published rate should be collected, rested upon the carriers. Carriers generally, guided by the Commission's conclusions in this matter, have filed new rules and regulations in conformity therewith. It appears that the practices at Nashville have been thus corrected, and cut off altogether on movements through the Memphis crossing to Nashville as the possibilities of defeating the published rates in connection with that movement, to which attention was called in our former report in this case, could be obviated in no other way.

The results of the Commission's inquiry and the action following on the part of the carriers made it advisable to vacate the order originally entered in this case in so far as it required defendants to absolutely cease and desist from granting the privilege of rebilling and reshipping to dealers at Nashville, as set out in our former report in this case, and the Commission therefore proposed to consider a modification of its order in such manner as to merely prevent the discrimination between Nashville and other places, leaving it to the carriers to accomplish this by either granting the privilege at complainant cities or by denying it to all. A citation was issued and served requiring defendants to show cause why the order theretofore entered should not be changed and modified so as to require the defendants to cease and desist from any undue or unreasonable preference or advantage in any respect whatever in favor of Nashville, or subject Atlanta and other complaining cities, with respect to transit

or reshipping privileges upon grain, grain products, and hay,
175 to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

A hearing was had upon this citation or rule, additional briefs have been filed in the case, and it has been further orally argued. The defendants have amplified the evidence upon certain points with regard to the dissimilarity of circumstances and conditions affecting the transportation of the traffic involved to and from Nashville, destined to points farther to the southeast, as compared with those affecting the transportation of like traffic into and out of Atlanta and the other complaining cities. It is argued that the disadvantages complained of, if any, are not undue or unreasonable or in violation of the act to regulate commerce. This matter was quite thoroughly treated in the original record of the case, and it was at that time carefully weighed and considered by the Commission in reaching the conclusion announced in its opinion, supra. It seems advisable, however, under the circumstances, to briefly reconsider this phase of the question in view of the importance which now attaches particularly thereto.

It is claimed on behalf of the city of Nashville that it is a "primary grain market," and it is averred that this entitles that city to the privilege of reshipping grain in manner and effect, as stated in our previous report herein, and that complainant cities are not markets of this character and hence are not entitled to such privilege. While the record is not clear as to what is meant by the use of the expression referred to, it is said that a primary grain market is one where surplus grain is gathered from adjacent producing points and held for the demands of commerce, and that this is true of Nashville. No statistics have been offered showing the relative amount of grain coming from the Ohio River and beyond into Nashville, or the amount of local grain brought to Nashville; but it is certain that the evidence does not show a surplus of local production. It does not appear that reshipping was accorded to Nashville on the hypothesis that it was a concentration point for local grain. The privilege was particularly intended to take care of the through movement from the northwest. Grain from the region south and east of the Ohio and Mississippi rivers and not moving from the crossings by rail is not entitled to reshipping privileges at Nashville whether brought in by river or by rail. The record throws little light upon the relation of Nashville to the local production of grain in years gone by, and whether or not it was at one period of its history a concentration point for the grain produced in that section, and therefore a primary grain market in that respect must necessarily have very little to do with the issues here involved, because the privileges complained of do not apply on anything but grain from the crossings by rail, and because if Nashville was ever a primary grain market in the
176 sense indicated it was at a time before these transit privileges had been established and when the movement of grain from the northwest to the southeast was quite limited.

Some of the characteristics given in the affidavits, filed on behalf of Nashville, of points at which the reshipping privilege is found are: where there is a wholesale supply market from which distribu-

tion can be had in various directions to other markets in touch wit
it or in the same general territory; where the geographical positio
of the city is such that it has the facilities for water or railroa
transportation and railroad competition among carriers with respe
to where the commodity is produced and where it is consumed, an
where there is proximity to the final market. It is said that th
existence of an interior concentration point or milling point an
terminal markets enables the producer to have available competitiv
markets for his commodities and enables the consumer to have a
steady, reliable market in competition with other markets fro
which to draw his supply. It is pointed out that the extension o
these transit privileges, permitting a commodity to be stopped at an
interior concentration or milling point where rates do not break and
then permitting it to be reshipped from that point on the basis of a
through rate from origin to destination, undoubtedly tends to equal-
ize and distribute the industries of the country and prevents conges-
tion by the location of all these industries at terminal or rate-break-
ing points. These affidavits aver that there are hundreds of points
throughout the United States that possess the qualifications above
described and which have been accorded these privileges.

It is further claimed for Nashville that she is advantageously
situated for the distribution of grain, and is therefore also a dis-
tributing market. It is in effect urged by defendants and the repre-
sentatives of Nashville interveners, that it has all the attributes of
a primary grain market and also of a distributive market, and that
in these particulars no other city south of the Ohio or east of the
Mississippi is similarly situated.

It is also urged that Nashville is located at precisely the proper
distance between points of origin and destinations so that grain may
be stopped off from its journey and elevated, and thens prevented
from spoiling, and that cities located somewhat to the north of Nash-
ville are reached too soon for this purpose, while any point south of
Nashville could not be reached until the grain would be liable to
damage. There is some conflict, however, as to this matter, and
Atlanta's representatives have reminded us of the salubrity and
wholesomeness of her atmosphere and her elevation above Nash-
ville.

It is a recognized fact that the existence of the Cumberland River
has produced conditions which have been reflected in freight rates
and adjustments thereof to Nashville, but it is important to
177 inquire just what effect the river has upon the traffic here in-
volved. In meeting the river competition on this grain traffic
from the northwest, the carriers have not reduced the rates to Nash-
ville in competition with the river, but they have left that city to the
enjoyment of what traffic could be moved to that point at river rates
of transportation for local consumption. At the same time, by the
adoption of the reshipping privilege at Nashville, commercial pref-
erence and advantage have been accorded the interests there engaged
in supplying the immense territory to the southeast with its increas-
ing consuming power. In other words, the present adjustment pro-
motes both the local and the through grain business and adroitly
keeps the line of cleavage between them clear and distinct. The

grain moving into Nashville locally, via the river and otherwise, can hardly compete with the through business to the southeast under the present tariffs, and grain moving into and out of Nashville under the transit privilege can not very well compete with the local industry. This twofold adjustment leaves little more that could be done to put Nashville on an advantageous basis as compared with all rivals in that territory.

In respect to this river competition it is important to note that it has not in fact reduced the rate to Nashville, nor the rate from the crossings to the southeast, nor the rate from Nashville to the southeast. The reshipping plan seems to have pretty well destroyed this river competition without reducing materially these charges. The evidence is to the effect that reshipping was adopted to secure to the railroads a portion of the business. As to this immensely valuable through business from the northwest to the southeast, it has absorbed practically all. In fact, under present conditions, with the cost of transhipment from rail to river and from river to rail, this water competition is greatly nullified. Furthermore, there seems to be nothing connected with this privilege in its actual practice in this country which makes it dependent upon location upon navigable waters. In fact, but an insignificant portion of the total number of points where it is practiced are so located, and many cities north and west of the Ohio and Mississippi rivers enjoy the privilege either as a primary of distributive market irrespective of location upon navigable waters or of other competitive conditions.

Considering particularly the traffic involved in this case, namely, the transportation of grain, grain products, and hay from the grain-growing region lying to the north and west, to the consumers of the Atlantic states of the southeast, there are many characteristics of similarity between Nashville and complainant cities which are obvious and predominating. They are all located in a section which consumes a portion of the excess production of grain and its products produced in a more or less distant part of the country.

178 This condition of affairs naturally invites those with capital and business inclination to participate in the enterprise of supplying this demand. Both Nashville and the complainant cities are close to the consumers, and the testimony is that they are in strong competition for even the smallest trade of the retailers and consumers. Nashville is, of course, peculiarly benefited by the exclusive use in this territory of this reshipping privilege in connection with the further practice of the carriers of charging the same rate whether the shipment is a carload or a single barrel of flour or bale of hay. The testimony is that the distant markets at the river crossings confine themselves to the larger wholesale trade of the southeast and, therefore, there is not the same character of competition between the crossing points and the southeastern cities as exists between the cities in the southeast themselves.

In the rapid growth and development of the south in recent years the volume of consumption has increased proportionately and the competition for business is strong and persistent. It appears of record that complainant cities are laboring under great disadvantage

in competition with Nashville while the business thrives and prospers at Nashville, and whatever other cause may contribute toward producing this result, the fact remains that Nashville does have these various privileges contained in the tariffs of defendants, and that she is the only city in the southeast enjoying them.

At the hearing it was strongly urged that the Commission should not disturb the existing arrangements because grain dealers at Nashville have invested large sums in facilities for handling the business located upon the lines of defendants, and, therefore, discontinuance of transit privileges at Nashville would work an enormous destruction of values amounting to confiscation.

The carriers assert that they did not voluntarily establish the privilege of reshipping at Nashville, but that it was forced upon them by conditions over which they had no control. It is not infrequent in our investigations of matters dealing with discrimination to find the carriers whose tariffs have contained rates or practices in violation of the principles of relative justice defending their action as being a necessary result of the logic of a situation from which they would have been glad to escape had any means of escape been open to them.

The principle of milling-in-transit is quite similar to that of reshipping, namely, the application of the through rate to an intercepted movement. In fact we are told in this record by interveners' affidavits that—

> transit privileges now generally accorded had its inception years ago in the milling-in-transit of grain, which had for its purpose the placing of mills on a direct line of haul, origin of the grain to destination of the product, on a parity, by protecting the through rate, point of origin to ultimate destination.

179 We observe from the record that the reason advanced for originally permitting milling in transit at Nashville was to keep Nashville mills running the year round. It is not claimed that milling in transit was forced upon the carriers in the same sense that reshipping was, yet the carriers have now extended milling in transit without preferring one point to another.

The Commission recognizes its duty to carefully consider the results of its orders upon established business conditions, and has not failed to carefully consider the effect of an order in this case. The carriers indicated at the hearing that the effect of an order declaring the privileges accorded to Nashville as amounting to unjust discrimination and undue preference and disadvantage against complainant cities would result in taking out the privileges at Nashville, rather than extending them to complainants. Under such an order, it would, of course, be within the election of the defendants to obviate the discrimination in either manner. We think, however, that the objections advanced by them for not extending the privilege are not as serious as they apprehend. The privilege, of course, could be surrounded by any lawful limitations and regulations prescribed by the carriers so long as their application was uniform to all parties in interest. For instance, it would not be necessary to permit the privilege at more than one point on the same grain, and then

only in a forward direction. And as to defendants' objection to the trouble and expense of policing the privilege elsewhere than at Nashville, manifestly it is a discrimination undue in nature to provide for these things at one place and refuse on the ground of trouble or expense to do likewise at a competing point.

Admitting, however, that the carriers should find it necessary for their purposes to take out the privilege at Nashville, we feel that the benefit to be derived by all parties and interests concerned by a due observance of the statute would in and of itself justify the action; and, further, that the results on the business at Nashville would not be as dire and chaotic as is represented by the defendants.

While admitting much that is said in favor of Nashville and appreciating the zeal and persistency with which her natural advantages of location have been presented for our attention, we find that in the light of comparison with the other cities in the southeast Nashville is not so dissimilarly situated with respect to this particular traffic as to entitle it to be singled out and exclusively granted the important and extremely valuable privileges denied to its competitors. It seems to us remarkable and unusual that the carriers, in their tariffs, should have preferred one of these points to another in the handling of this profitable business. That their tariffs are contrary to the provisions of the statute we have no doubt,
180 as we do not find anywhere in the record a substantiation of the existence of such conditions of dissimilarity at Nashville as would justify giving the sanction of the Commission to an adjustment which accords these very valuable privileges to one city of the southeast and denies them to every other city south of the Ohio River and east of the Mississippi.

After a careful consideration of all the pertinent facts and circumstances, we are of the opinion and find that the matters and things complained of herein constitute the undue and unreasonable preference and advantage and the undue and unreasonable prejudice and disadvantage, as between the parties to this proceeding, prohibited by section 3 of the act to regulate commerce, and an order will be issued accordingly.

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Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 9th Day of June, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 1698.

W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, Adams-Whitney Company, A. L. & M. W. Fain, J. J. & J. E. Maddox, Charles E. Caverly, R. W. Davis, of R. W. Davis & Company; A. C. Woolley & Company, McCord-Stewart Company, Rogers & Harwell, F. W. Keeley Company, Deaton Grocery Company, Dan Joseph Company, G. Y. Banks & Company, The Macon Grocery Company, A. B. Small & Company, Adams Brothers Company, Merritts & Company, F. W. Hazelhurst Company, Adams & Johnson, Soloman & McRae, R. T. Birdsey & Company, George A. McArthur, Parker-Willis Company, Cordele Grocery Company, Albany Grocery Company, Tift & Peed Grocery Company, A. S. Pendleton Company, Dalton Grocery Company, Marion Curry, Orr-Smith Grocery Company, Brandon & Dyer, Gallaher Grocery Company, Simpson Grocery Company, J. R. Ragan, J. M. Bradshaw & Company, George F. Chidsey and Carey T. King, Talmadge Brothers, Webb & Crawford, G. H. Hulme, and Epps-Wilkins Company,

v.

The Nashville, Chattanooga & St. Louis Railway, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Atlanta, Birmingham & Atlantic Railroad, Southern Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway, Alabama Great Southern Railroad, Georgia Southern & Florida Railway, Illinois Central Railroad Company, Central of Georgia Railway Company, St. Louis & San Francisco Railroad Company, Seaboard Air Line Railway, and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers Thereof; Atlanta & West Point Railroad Company, and The Western Railway of Alabama, Defendants; The Nashville Grain Exchange and Nashville Board of Trade, Interveners.

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This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order, and the Commission having found in said report that the granting to dealers at Nashville, in the State of Tennessee, the privilege of rebilling or reshipping grain,

grain products, and hay from Nashville, whereby grain moving through Nashville may be unloaded and held not longer than six months and then shipped on at the through rate from origin to final destination instead of at the sum of the rates into and out of Nashville, which rebilling or reshipping privilege has been more particularly described in the report made and filed in this case, while denying said privilege to dealers in Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the state of Georgia, is unlawful and gives undue and unreasonable preference and advantage to Nashville and to the dealers in grain, grain products, and hay located at Nashville, and subjects Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, and the dealers in grain, grain products, and hay located at said cities, to undue and unreasonable prejudice and disadvantage.

It is ordered, That the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911, and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities.

183 47. 35.

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

EXHIBIT G.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the paper hereto attached and entitled Report of the Commission is a true copy of the original now on file in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this twenty-fifth day of November, 1911.

[Seal Interstate Commerce Commission, 1887.]

JUDSON C. CLEMENTS, *Chairman.*

184 47.

United States Commerce Court. Filed Feb. 12, 1912. G. F. Snyder, Clerk.

Certified Copy.

Opinion No. 1247.

Before the Interstate Commerce Commission.

No. 3002.

In the Matter of the SUBSTITUTION OF TONNAGE AT TRANSIT POINTS.

Decided May 3, 1910.

Report of the Commission.

185 No. 3002.

In the Matter of the SUBSTITUTION OF TONNAGE AT TRANSIT POINTS.

Submitted March 5, 1910; Decided May 3, 1910.

1. The various investigations held by the Commission in regard to the matter of the substitution of tonnage at transit points have failed to demonstrate that the Commission's Conference Ruling, No. 76-A, relative to substituting tonnage at transit point was too strict; but they have demonstrated that the various practices outlined in the report herein have resulted in the violation of published rates, to the injury of shippers not taking advantages of such practices. Continuance of such abuses will compel the Commission to resort to criminal prosecutions, including both shippers and carriers, to secure obedience to the law.
2. The Commission does not condemn the transit privileges as such, but holds that the responsibility for safeguarding and policing the transit privileges, to the end that the lawfully published rate shall be collected, rests entirely upon carriers; shippers, however, will not be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of carriers to collect such rates.
3. It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges, and they may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates.
4. If carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now.

while the elimination of these arrangements will decrease their expense of bookkeeper and supervision and will be for the benefit of all the industries affected.

5. If the carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers.

John H. Marble for the Commission.
Henry M. Allen for Millers' National Federation.
Edward Andrews, J. C. Murray, C. B. Pierce, W. W. Hopkins, and F. M. Bunch for Chicago Board of Trade.
G. C. Bailey for E. W. Bailey and Company.
Charles Barham for Nashville, Chattanooga & St. Louis Railway.
Perkins Baxter for lines in Southeastern Territory.
L. V. Beatty for Kansas City Southern Railway Company.
John H. Bell for Bell-Duff Commercial Company.
G. P. Biles and T. C. Powell for Cincinnati, New Orleans & Texas Pacific Railway Company.
186 Harry H. Bingham for Bingham Hewett Grain Company.
Claude H. Birkett for Birkett Mills.
R. A. Brand for Atlantic Coast Line Railroad Company.
Alfred Brandeis for Brandeis & Son.
H. C. Burnett for Lehigh Valley Railroad Company.
R. L. Callahan for Callahan & Son.
R. W. Chapin for Buffalo Corn Exchange.
Samuel Claggett and J. R. Ruffin for Norfolk & Western Railway Company.
R. N. Collyer for Uniform Classification Committee.
W. T. Cornelison for Peoria Board of Trade.
Charles M. Cox for New England Millers' Committee.
George H. Crosby for Chicago, Burlington & Quincy Railroad Company.
Milton L. Cushing for J. Cushing & Company.
John B. Daish for American Hay Company.
C. E. Dewey for Central Vermont Railway Company.
F. C. Dillard and J. A. Munroe for Union Pacific Railroad Company and others.
George D. Dixon, William Hodgdon, and Robert C. Wright for Pennsylvania Railroad Company.
M. F. Doyle for Cleveland Grain Company.
Edward D. Evans for Evans Milling Company.
George H. Evans for Indianapolis Board of Trade.
F. P. Eyman and S. A. Lynde for Chicago & North Western Railway Company.
B. M. Flippin, E. B. Boyd, J. C. Jeffery, and H. J. Campbell for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.
Thomas Forman for Thomas Forman Company.
H. W. Forward and Henry Adams for Erie Railroad Company.
G. J. Gibbs for Texas Grain Dealers' Association.
Gus. Giesecke for Guenther Milling Company.

A. P. Gilbert and E. D. Hotchkiss for Chesapeake & Ohio Railway Company.

J. S. Gillies and D. D. Earing for Gillies Brothers.

A. L. Goetzmann for Gillies National Federation and others.

D. M. Goodwyn and A. R. Smith for Louisville & Nashville Railroad Company.

Lincoln Green, C. B. Northrop and T. C. Powell for Southern Railway Company.

E. R. Guenther for Pioneer Flour Mills.

C. Haile for Missouri, Kansas & Texas Railway Company.

E. J. Hana for Northeastern Grain Dealers' Committee.

187 F. H. Hartwell for H. Verhoeffler Company.

Joseph Hattendorf and D. W. Longstreet for Illinois Central Railroad Company and others.

George S. Hobbs for Maine Central Railroad Company.

F. B. Houghton for Atchison, Topeka & Santa Fe Railway Company.

H. C. Hudgins for Norfolk & Southern Railway Company.

A. J. Hunt for Millers' National Federation.

D. O. Ives and E. V. Mitchell for Boston Chamber of Commerce.

William S. Kallman, Francis La Bau, James Webster, and O. E. Butterfield for New York Central Lines.

L. H. Kentfield for New York, New Haven & Hartford Railroad Company.

J. C. La Coste and M. L. Bell for Chicago, Rock Island & Pacific Railway Company and others.

J. C. Lincoln for St. Louis Merchants' Exchange.

John W. Loud and George W. Kretzinger for Grand Trunk Railway system.

C. C. McCain for Trunk Line Association.

J. D. McLaurin and David N. Skillings for Skillings, Whitneys & Barnes Lumber Company.

E. J. McVann for Commercial Club of Omaha.

J. B. Magee for Grain Shippers of Cairo.

J. R. Mills for Kansas City Southern Railway Company.

L. F. Moore for Wichita Transportation Bureau.

G. C. Mountcastle for Fort Worth Freight Bureau.

W. J. Mullin for Delaware & Hudson Company.

H. M. Newlin for Pennsylvania Steel Company.

E. A. Niel for Buffalo & Susquehanna Railway Company and others.

W. L. O'Dwyer for New Orleans, Mobile & Chicago Railroad Company.

Gibson Oliver for Oneonta Milling Company.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

R. M. Parker for American Sugar Refining Company.

W. A. Parker, C. S. Wight, and H. C. Smith for Baltimore & Ohio Railroad Company.

H. M. Pearce for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

J. M. Perry for Cutler Company.

H. E. Pierpont and William Ellis for Chicago, Milwaukee & St. Paul Railway Company.
R. E. Pratt for Buffalo Corn Exchange.
G. H. Purvis for Atlanta & St. Andrews Bay Railway Company.
188 P. P. Rainer for Joint Rate Inspection Bureau.
E. S. Rea for Rea-Patterson Milling Company.
Edgar J. Rich for Boston & Maine Railroad.
Lincoln Richards for Quaker Oats Company.
F. M. Rogers for Medlin Milling Company.
J. L. Seager and A. B. Wallace for Delaware, Lackawanna & Western Railroad Company.
F. O. Shane and G. C. Shane for Shane Brothers Wilson Company.
Thomas G. Smiley for Western Maryland Railway Company.
C. B. Stafford for Memphis Grain & Hay Association.
E. S. Stephens for Chicago & Eastern Illinois Railroad Company.
Sidney St. F. Thaxter for Thaxter & Company.
Dean K. Webster for H. K. Webster Company.
L. D. Wehle for Shippers from Ohio River Gateways.
B. F. Wilkinson for Wilkinson, Gaddis & Company.
H. G. Wilson for Kansas City Board of Trade, and millers.
F. H. Wood and E. K. Voorhees for St. Louis & San Francisco Railroad Company and others.
H. W. Woolf for Southern Weighing & Inspection Bureau.
D. K. Hamilton and C. T. Ballard for Ballard & Ballard Company.
Hawkins & Franklin for El Paso & Southwestern System.
W. H. Mauss for National Wool Warehouse & Storage Company.
Donald Rose for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and Indianapolis Southern Railroad Company.
Moses Rothschild for Davenport Grain Exchange.
George A. Schroeder for Milwaukee Chamber of Commerce.
W. P. Trickett for Minneapolis Traffic Association.
A. G. Tyng for Peoria Board of Trade.
A. H. Brenner and J. P. Daughty for Augusta Cotton Exchange and Board of Trade.
Charles L. Gay for Farmers' Compress and Warehouse Company.
J. L. Hawley for Gulf and Ship Island Railroad Company.
C. B. Howard for Inman, Akers & Inman Southeastern Cotton Buyers' Association.
Edward Karow and John Nisbet for Savannah Cotton Exchange.
Leslie E. Keiffer for Moyse & Holmes.
James Menzies for Atlantic Coast Line Railroad Company.
Thomas Nesbitt, W. C. Fenn, and S. B. Brown for Georgia Cotton Company.
C. H. Pearson and E. T. Steele for Alabama Great Southern Railroad Company.
T. B. Stackhouse for Standard Warehouse Company.
Lawrence Weil for Lehman Weil & Company.

189 W. A. Winburn and Charles T. Airey for Central of Georgia Railway Company.
W. P. Bowles for Wilson Ward Company.
S. M. Bray for Williams & Fitzhugh.
F. M. Crump for F. M. Crump & Company.
James S. Davant for Memphis Freight Bureau.
Paul Dillard for Dillard & Coffin Company.
A. L. Foster for J. W. Thompson Lumber Company.
C. C. Hanson for Gulf Compress Company.
C. D. Jordan for Southern Cotton Oil Company.
R. O. McCormack for Fort Worth Freight Bureau.
Joel E. Wynne for Wynne, Love & Company.
W. F. Yates for Yates, Donelson & Company.
L. M. Wilson for New York State and Pennsylvania grain dealers.
Thomas H. Shepard for Shepard & Morse Lumber Company.
C. S. Belsterling, E. J. Booth, Otto Gresham, Frank Kell, Frank L. Sullivan, T. G. Williams, R. R. Shiel, N. H. Burt, James P. Ferrall, J. T. Jennings, S. F. Parrott, John S. Turner, John Wade, W. S. Darnell, W. E. Gage, H. J. Hasenwinkle, C. C. McChord, H. H. Maury, John Myers, J. P. Norfleet, G. E. Patterson, James E. Stark, and E. Taenzer.

Report of the Commission.

COCKRELL, *Commissioner*:

This inquiry was initiated by the Commission on its own motion in response to numerous complaints from shippers to the effect that competitors at transit points were by various substitutions evading payment of published rates. In response to these complaints on June 25, 1908, the Commission issued the following ruling:

A milling, storage, or cleaning-in-transit privilege is established on the theory that the commodity may be stopped en route for the enjoyment of such privilege, and the commodity or its product be forwarded under the application of the through rate from original point of shipment. It is not expected that the identity of each carload of grain, lumber, salt, etc., can or will be preserved, but in the opinion of the Commission it is unlawful to substitute at the transit point, or forward under the transit rate, tonnage or commodity that does not move into that point on that same rate.

Practically no attention was paid to this ruling by either shippers or carriers. The complaints grew in number, however, and the abuses increased rather than decreased in volume. Therefore, on June 29, 1909, the Commission issued its Conference Ruling No. 76-A, as follows:

76-A. Substituting Tonnage at Transit Point (adopted June 29, 1909).—A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of

190 shipment. It is, therefore, not permissible at transit point to forward on transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each carload of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley, nor may shingles be substituted for lumber, or lumber for shingles, nor may rock salt be substituted for fine salt, nor fine salt for rock salt; likewise oak lumber may not be substituted for maple lumber, nor pine lumber for either oak or maple, nor may hard wheat, soft wheat, or spring wheat be substituted either for the other. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise.

To the end that abuses now existing at transit points may be eliminated, carriers will be expected to conform their transit rules and their billing to the suggestions of this rule. In the event of the failure of any carrier so to do, reductions of legal rates caused by transit abuses will be regarded as voluntary concessions from legal rates.

Following this ruling numerous protests were received from shippers at transit points (particularly from millers at milling-in-transit points) to the effect that it was too strict and that its application would destroy all the benefits of transit privileges. The shippers making these protests petitioned the Commission to make an investigation into the matter of substitution of tonnage in transit, and asked that they be permitted to explain their practices and set forth their necessities. In response to these protests and requests the present inquiry was instituted.

Hearings in this matter have been held at Washington, D. C., Chicago, Ill.; Montgomery, Ala.; Memphis, Tenn., and Boston, Mass. At these hearings all parties concerned have been invited to come forward and give the Commission all information in their possession. The hearings have been largely attended by both shippers and representatives of carriers, and the Commission is persuaded that the evidence given has been generally frank and full and that the record in this case fairly presents transit practices.

The testimony shows that substitution by which published rates are defeated is the rule at all transit points where that opportunity exists. The testimony has shown that published rates upon grain are defeated by substitutions at every grain market enjoying transit privileges, with the possible exception of the New England markets reshipping into New England territory. Grain shippers, however, are not the only delinquents. At Detroit it was found that through rates upon lumber are largely defeated by substitution. At Milwaukee

upon salt are likewise defeated. At various points in the south rates upon cotton are defeated.

Substitution of one commodity for another.—The most apparent abuse shown by the inquiry is the substitution of one commod-
191 ity for another. At Chicago, for instance, it was found that oats had been forwarded as a continuation of the through transportation of shipments of barley. It is evident that any reduction of the rates obtained by such a practice is in violation of the act to regulate commerce. Similarly, instances of substitution of corn for oats, of wheat for barley, etc., have been found. In such cases the substitution is so evidently that of one commodity for another commodity that no difference of opinion as to the propriety of the practice can be said to exist.

The substitution of commodities which is most dangerous to the integrity of rates, however, is more insidious in form than the above. By investigating various shipments through Chicago, for instance, it was found that shipments of red winter wheat moving from Chicago to points in southeastern territory enjoyed transit privileges based upon shipments of hard winter wheat into Chicago from Kansas City, Mo. The testimony shows that no red winter wheat could be secured at the points in Kansas shown by the Kansas City billing as the origin of the shipments of hard winter wheat. It was also shown that a very large proportion of the red winter wheat reaching Chicago market comes from points south and southeast of the city of Chicago, not enjoying through rates to southeastern territory. It was evident, therefore (and this was admitted by a member of the very firm which made this substitution of soft wheat for hard wheat), that by the manipulation the rate of the railroad operating from Kansas City to Chicago had been defeated 3½ cents per 100 pounds, while the rate of the road operating from Chicago to the Ohio River had been defeated 2½ cents per 100 pounds, both reductions being from the rates published and legally applicable to the shipments actually made. Moreover, it appeared from the testimony that the completion of the substitution was made by sending forward the hard wheat from Kansas upon the railroad billing of the soft wheat arriving from Illinois, thus defeating the through rate from Chicago to the Atlantic coast on this wheat by one-half cent per 100 pounds. Here, therefore, is a reduction of 6½ cents per 100 pounds from the legal rates gained by device through the failure to show upon the railroad billing the fact that different kinds of wheat are really separate commodities, distinguished as markedly one from the other in the market as oats from corn or barley from wheat.

There is some uncertainty in the record as to the amount of the substitution practiced under the device last above described. There is absolutely no uncertainty, however, as to the possibility of such substitution and as to the fact that it has been made. The Commission has in its possession the billing and inspection records of no less than 30 carload shipments of wheat as to which this device was
192 used, with the result of defeating published rates as above stated. It also conclusively appears from the record that precisely the same manipulation is possible at Chicago upon ship-

ments of corn as is above outlined for shipments of wheat. The market for yellow corn is largely in New England territory, while the market for white corn is largely in southeastern territory. Yellow corn is largely produced at points west of Chicago which enjoy joint rates to the southeast, but which do not enjoy joint rates to New England territory. A large part of the white corn reaching Chicago market is produced at points south and southeast of the city enjoying joint rates to New England territory and not to southeastern territory, the rate situation being identical with that applying to wheat above described. By substituting yellow for white corn, therefore, at Chicago the Chicago dealer is enabled to defeat rates several cents per 100 pounds.

At Detroit it was shown that the failure to distinguish in railroad billing between oak lumber and maple lumber was the occasion for a departure from the rates by means of substitution of 3½ cents per 100 pounds. In this case oak lumber shipped from Cincinnati to Detroit, and there milled while in transit to New England territory, is by the milling reduced in weight not less than 50 per cent. Therefore shippers using the transit privilege at Detroit send forward from that city the product of two cars of oak upon the transit privilege of one car of oak inbound, thus securing a surplus transit bill, which is used for forwarding an equal weight of maple lumber, brought to Detroit by rail and by boat from points northwest of that city. This maple lumber, according to the published tariffs, is due to pay a rate of not less than 15 cents per 100 pounds from Detroit to Boston. By sending it forward as the continuation of transit of oak lumber from Cincinnati this rate, however, is reduced to 11½ cents per 100 pounds. This last-described case, besides helping to show that railroad billing should be more precise in its description of the commodity carried than at present, also shows that the problem of loss in weight at transit points must be met by the tariffs. The latter point will be more fully considered below. Similarly, it was found that at Burlington, Vt., lumber was sent forward as the transit of shingles, with the full knowledge and consent of the railroad company concerned.

The Commission also found that railroad billing for salt at Milwaukee, where transit is enjoyed upon this commodity, frequently covers fine salt into Milwaukee and rock salt out, thus showing that rock salt is sent forward as a continuation of the transit of fine salt, to the defeat of the published rates, and to the injury of competing shippers not practicing this device.

Enough has been said to show that transit rules and regulations and railroad billings which do not distinguish between such different commodities as hard wheat and soft wheat or as yellow corn
193 and white corn or as oak lumber and maple lumber or as rock salt and fine salt leave wide open the opportunity for practices which defeat rates, violate the act, and injure honest shippers.

Although it is beyond the record, the Commission has reason to believe that at transit points on the Mississippi River substitution of timothy hay for prairie hay has taken place with the result of defeating published rates; also that substitution of white oats for red oats has taken place with a like result.

Invisible loss at transit points.—Many transit tariffs recognize the obvious fact that loss of weight at the milling point must be allowed for in the rules governing the privilege, or that local commodities will be substituted and sent forward without paying the correct local rate. For instance, transit tariffs governing the shelling of corn in transit at various western points provide that for each 100 pounds of ear corn inbound there may be sent forward as the continuation of the transportation 70 pounds of shelled corn and 30 pounds of cobs and husks. Also at the various points where milling in transit is given upon logs, it is provided that the weight inbound must be three or three and one-half times the weight outbound. Any excess of shipments outbound above this proportion must pay the local rate from the transit point. When properly adjusted to the actual conditions, such tariffs represent the obviously correct principle that transit can cover only the identical commodity or its product. In the case of the lumber shipments to and from Detroit above described it is evident that the transit of the oak lumber from Cincinnati should not cover more than the product of the oak actually received from Cincinnati. The failure of the tariffs in that case to so provide opens wide the door for the substitution of local tonnage to replace the loss of weight resulting from the milling process.

The Commission has before it tariffs governing the shelling of corn in transit at some western points, which provide that a tonnage of shelled corn equal to the weight of the ear corn received inbound may be forwarded at the balance of the through rate from the transit point. Such a tariff is a direct invitation to the shipper at the transit point to evade the rate by buying corn locally or from nontransit points and putting in the product of its shelling to replace the weight of the cobs in the shipment actually entitled to the transit. The testimony showed that at various transit points in the west shippers are allowed to kill and dress poultry in transit, sending forward a weight of dressed poultry equal to the weight of the live poultry received. The opportunity for abuse of the rates by shipping local poultry in place of the weight lost in dressing is evident.

Tariffs providing milling-in-transit privileges for the various grains are generally defective in this respect: In addition to failing to take account of the invisible loss in weight caused by drying,
194 cleaning, and milling, these tariffs allow outbound shipments of any one product to be forwarded at a weight equal to the entire weight of the grain received; that is to say, the shipment of a carload of flour may be based pound for pound upon the transit of a carload of wheat. It is evident that flour should not be forwarded as the transit of that portion of the grain which is made into bran, shorts, or other product other than flour. So far as this is allowed millers having a nontransit market for the shorts and bran produced from transit wheat, forward the flour product of nontransit wheat upon transit billing to the extent of the weight of the shorts and bran produced from transit wheat.

This necessity for making an allowance for the loss of weight of the commodity in transit during the process of milling or cleaning or drying or storage runs throughout the entire transit problem. The

testimony shows, for instance, that barley will lose from 25 to 35 per cent of its weight in the process of malting, yet the malting-in-transit tariffs invariably provide that as many pounds of malt may be sent forward from the transit point at the balance of the through rate as there are pounds of barley received on the transit rate. The testimony from flour millers shows that the invisible loss in milling is comparatively small, amounting to from 1 to 2 per cent. The loss of weight in corn in the process of drying runs as high as 10 or 15 per cent, but will average 5 per cent. The loss of weight for lumber in the process of dressing, as shown above, is as much as 50 per cent.

In this connection, and to meet arguments that have been made at the hearings, the Commission desires to point out that some uncertainty exists as to whether the dealer at a transit point is to be placed upon an equality with his competitor at the point of origin of the raw material or with his competitor at the destination of the finished product. It is evident that the dealer at the intermediate point who has raw material drawn to him and sends the finished product through to destination secures from the carrier a different service from that which is given to the dealer who at the point of origin of the raw material manufactures the finished product and sends it through to destination. For example, dealers in lumber at Cincinnati may mill rough-oak lumber into flooring, reducing the weight by one-half in the process, and send the finished product from Cincinnati to New England territory at the lumber rate upon a single carload. The dealer at Detroit must have two cars of lumber drawn from Cincinnati to Detroit in order to get one car of the finished flooring to forward. The dealer at a New England point, the point of final consumption of this lumber, must have two cars of the rough lumber drawn the entire distance from the point of supply if he is to mill the same in competition with the dealers at Cincinnati or Detroit and must pay the lumber rate upon two cars to secure
195 one carload of the finished product. The contention of the millers at transit points is that they should be placed upon an equality with the millers at the source of supply of the raw material rather than with the millers at the destination of the product. We do not here attempt to decide which result should be reached, but it is evident that this result should be possible of attainment by open and honest practices, and that substitutions of local or nontransit commodities should not be permitted as a part of the plan.

The reference to the lumber situation at Detroit above is simply by way of illustration. The problem presented occurs with practically every commodity at practically every transit point.

Local supply and local consumption.—The testimony is general that shippers at transit points use when forwarding commodities the billing in hand which will give the best results; that is to say, they substitute in the way that will most reduce the published rates. One result of this practice is shown in the case of practically every flour miller appearing at the hearings. It was testified by these millers that the blending of wheat to secure a uniform grade of flour is an absolute necessity. At any typical milling point wheat is received

from different territories under different rates. At most mills also a considerable quantity is received from nontransit sources, some from farmers' wagons, and some from near-by railroad points. All the wheat from the various sources must be blended to produce a single barrel of flour. No single carload of wheat is available for use until it has been tempered by wheat of a different quality from some other territory. The result is that the identity of the inbound shipment is absolutely lost in the process of milling. Any given lot of flour represents the average of all the wheat received rather than any single lot. Millers, however, without exception, use for outbound shipments the billing in hand which will give them the best results; that is to say, although the identity of the commodities is absolutely lost in the mill, the identity of the billing is absolutely preserved, and shipments of flour which are an average of all the shipments of wheat received go forward as coming entirely from that point which offers the lowest balance of a through rate to final destination. It also results from this practice that flour compounded of all the shipments received at the mill and delivered locally or to nontransit points is entirely charged against the local or nontransit supply, although it could not possibly be made from such supply. It is evident that if shipments out are average shipments corresponding billing should be canceled for the same. It is also evident that in so far as consignments of flour are delivered to the local market made from grain received from transit points, billing from such transit points should be canceled.

If, however, local supply and local disposition are kept separate from transit supply and product, or if billing is properly can-
196 celed for all local disposition, and if proper and frequent check is made of grain and product and billing on hand, and billing in excess of grain and product on hand is canceled, the oldest billing being selected for that purpose, it does not necessarily follow that unlawful substitution is accomplished by the blending of the grain for milling.

This branch of the problem is by no means confined to the millers. In the south it was found that cotton mills frequently use each year a supply of cotton equal to or greater than the entire nontransit supply coming to the markets at which they are located. These mills must have cotton of a uniform grade, and their supply is obtained only by selection or "classing" from the entire supply of cotton reaching the local market; that is to say, the mill uses a few bales out of every shipment coming to the market, whether from a nontransit or from a transit point. The local supply of cotton is merged in the transit supply in making shipments to transit points beyond the market, the dealer invariably using the billing which will give him the best results. Thus it occurs that the supply going to the mill is charged as entirely resulting from the nontransit supply of cotton reaching the market, although as a matter of fact it is well known to be an average of all the cotton reaching the market. It is obviously not proper to take out for nontransit disposition portions of transit shipments reaching a market unless at the same time corresponding transit billing is canceled.

Mixed carloads.—The practice of sending forward from transit

points mixed carloads of various commodities as transit of solid carloads of such commodities is closely allied in nature with the above-described practice of flour millers. The mixed-carload practice finds its most important use with grain shippers of the New England territory. These shippers receive at their warehouses solid cars of the various grains for distribution to retail dealers in the smaller New England communities. It is obvious that such retail dealers can not carry in stock a full carload of each sort of grain or feed. The jobbers therefore make up carloads containing a representative assortment of various grains and grain products to go forward upon the transit rate. These mixed cars may contain half a dozen sorts of grain and a dozen sorts of flour and feed. The practice is to base the transit upon a solid car of one kind of grain. There is no indication in the record that through rates are defeated by this practice in New England, for the reason that there appears to be no nontransit supply of any one of the sorts of grain or feed handled in the above manner. All the commodities which are sent forward must, owing to the necessities of the case, have been received upon transit billing having precisely the same value for shipment beyond. In so far as there may be local supply of any of the commodities sent forward on this transit arrangement, it is evident that substi-
197 tution of such local supply is certain to take place in order to complete the deficiency in weight caused by local consumption.

If, therefore, there is no local supply at the transit point and billing is canceled for all tonnage disposed of locally, and the tonnage and the billing on hand are checked at reasonably frequent intervals and billing in excess of tonnage on hand is canceled, selecting for such cancellation the oldest billing, it would not seem that any unlawful feature is necessarily involved in this situation.

In other sections of the country than New England, however, and as applied to other commodities than grain and grain products, both in New England and elsewhere, it is certain that abuses of published rates occur in this mixed-car practice. As in the case of the millers blending wheat from different territory, some received on transit rates and some received on nontransit rates, it is evident that the shipments, either to transit or to nontransit points, represent an average of the various shipments received, and that corresponding billing should be canceled rather than that the entire mixed carload be charged against a solid carload from which it could not possibly have been produced.

Mixed feed.—The mixed-feed industry appears to be a growing one, especially at transit points. The maker of mixed feed mills together a number of grain and sometimes cotton-seed meal and molasses, producing what is practically a new commodity from various substances, some received upon transit rates and others secured either locally or upon nontransit rates. The present practice at many points is to forward cars of the mixture thus produced upon the transit of solid cars of grain. What has been said above regarding the blending of wheat by millers, and regarding the forwarding of mixed cars, and also regarding the substitution of the local supply

for transit tonnage consumed locally, fully indicates the position of the Commission regarding this question of mixed feed. We are convinced that great abuses exist in shipments of this character, but they do not seem to be other than a combination of the abuses separately discussed above. Regarding this matter of the forwarding of mixed feed, it is proper to suggest that there must be a limit to the application of the transit practice, and this limit must be reached when there is such a process of manufacture and such a loss of identity of the inbound commodity that the shipment forwarded may be said to be a new creation. Some of the mixed feeds brought to our attention appear to be beyond the fair limits of a transit practice.

Nontransit commodities added at transit points.—Some tariffs provide that nontransit commodities (such as stone, grit, or molasses) may be added to transit commodities (such as grain or seeds), and a weight of the mixture equal to the weight of the inbound transit commodities forwarded as their product. This presents the
198 difficulty of a less-than-carload lot of the nontransit commodity going forward at a rate lower than the less-than-carload rate properly applicable, and even lower than the carload rate from the transit point proper. It is obvious that such a practice can not be allowed, and that such mixed feeds and like products must go forward from the transit points in amounts containing at least the carload minimum weights of transit commodities taking the transit rates, and with the proper local rate (either carload or less-than-carload as the weight may be) imposed upon the nontransit commodities in the mixture. This rule must be followed wherever the nontransit property added is sufficient in amount to form a really calculable portion of the mixture. A like rule must be applied to the still more obvious case presented by the dealer who desires to include a lot of nontransit grain or other commodity in a carload of transit property. If the transit portion of the shipment is to move upon the balance of a carload rate it must be of itself not less than the carload minimum in weight, and the nontransit tonnage in the car must be charged with the proper local rate.

Concentration and classing of cotton.—The concentration and classing of cotton at various points in the south does not present any problem different in principle from those presented by other commodities in other sections. Wherever there is a local supply and a nontransit disposition abuses are found, such abuses being greatest at seaports and at the points where mills have been established. It is believed that the general discussion of the practices relating to other commodities fully covers the abuses which are undoubtedly present at the cotton reshipping points in the south.

Trading in expense bills.—It is obvious that at the transit points where substitution is allowed expense bills will come to have an independent value separate from the commodities to which they refer. No effort was made to develop particular instances of purchase and sale of expense bills, but the record shows that such transactions take place at various points from time to time. The record also shows clearly that the price of commodities at transit points is frequently dependent upon the expense bill furnished by the seller, a

somewhat higher price being paid if the expense bill is peculiarly valuable for outbound shipment. The additional price paid in consideration of expense bills of a certain character amounts obviously to a purchase of the bills.

At the Montgomery hearing, while it was not developed that expense bills for cotton are being sold at cotton-classing points, it was fully developed that such expense bills are frequently loaned by one shipper to another without the transfer of the commodity to which the bills relate. Thus a shipper having a carload of cotton to forward is able to get upon such cotton a lower rate by reason of the favor of one of his neighbors than could be secured by reference simply to the tariff of the carrier. Such transactions are complete proof of unlawful substitutions.

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At Memphis a peculiar situation exists. The rates for the transportation of cotton to that city are higher than net rates, a refund being given upon proof of shipment of a like weight of cotton via the line of the same carrier. Expense bills for inbound shipments are held by the cotton factors or commission merchants representing the growers. Expense bills for outbound shipments are held by the buyers representing the consumers. No refund can be secured without the presentation of expense bill for each movement. The result is that many expense bills are sold by the buyers to the factors for an amount equal to one-half of the refund to be gained. Some factors remit the refund to their principals in this country; some are able to remit only a portion through having to buy outbound expense bills. Other factors retain the refunds, leaving their principals to pay the gross rates to Memphis. The entire situation is unsatisfactory and should be cured by the installation of a system of flat rates.

Surplus billing.—It was shown by the hearing that dealers at transit points frequently have billing in hand without having an equivalent amount of the commodity represented by the billing. The practice in such cases is to retain the billing until a nontransit supply of the commodity can be secured, then to send such nontransit supply of the commodity forward upon the transit billing. That this is an abuse is generally recognized. The new rules for the government of grain transit on the Ohio River expressly provide that surplus billing shall be destroyed and that at no time shall any shipper have in hand transit billing which is not represented by transit commodity awaiting shipment. Obvious as this principle is, it is not generally recognized. No tariffs discovered by us recognize the obvious fact that unpaid expense bills covering grain in stock must be considered when the cancellation of surplus billing is undertaken. Certain milling-in-transit tariffs provide for the cancellation of surplus billing only once per year, and others make no provision for any cancellation at any time. This leaves wide open another opportunity for such substitution as has been above described. To be absolutely lawful the cancellation of the billing should be automatic; that is to say, when the commodity represented by the billing is disposed of, either locally or to a nontransit point or to a transit point, the inbound billing covering it should be canceled. Any

other practice means that local commodities will be substituted and sent forward on the transit billing.

Overdrafts upon transit accounts.—The anomaly is presented of outbound shipments from transit points at balances of through rates before the receipt of the inbound shipments depended upon
200 for the transit privilege. At Milwaukee it developed that a number of grain shippers had enjoyed transit to the extent of some millions of pounds each beyond the amounts to which they would be entitled on the basis of shipments from transit points. The same feature has arisen with regard to shipments of dairy products at various points. Such situations show the recklessness with which both carriers and shippers have misused the transit arrangement and the urgent necessity for radical reforms.

Collection of less-than-transit rates to transit points.—In the northwestern transit tariffs generally it is provided that upon receipt of grain at the transit point the through rate to the final destination shall be paid and that such destination shall be indicated. This at first glance seems not to afford opportunity for abuse. When it is remembered, however, that the rates from Minneapolis to various milling points intermediate between Minneapolis and Chicago are higher than the rates from Minneapolis to Chicago, it will be seen that the miller at the intermediate point, by paying the rate to Chicago and having the grain delivered to him locally, actually gets shipments to the transit point at less than the rate to such point. In one case where a large milling industry is concerned, the rate on oats from Minneapolis to the milling point is 15 cents per 100 pounds. The rate on oats from Minneapolis to Chicago via such milling point is 7½ cents per 100 pounds. This mill, under these tariffs, pays the rate to Chicago, 7½ cents per 100 pounds, and receives delivery of the oats at the milling point. It has a moral duty, of course, to send these oats forward and thus complete the transit. We can not find, however, that there is any enforcement of this duty. It mills the oats and has the right to send forward an equal tonnage. It may secure oats from a transit point enjoying a different rate and forward them, or forward oats from a nontransit point, or it may refrain altogether from completing the transit transaction. It is evident that such an adjustment is absurd. Upon delivery of this commodity at any point, no less than the rate to that point should be collected; otherwise the local rates to the point cease to have any practical significance.

Transit as a railroad policy.—One striking fact developed by this inquiry is that the transit privileges have been needlessly multiplied by the carriers. The interest which prompts this needless extension of the privilege is apparent. A carrier bringing raw material to a competitive transit point desires always to make certain that the product of such raw material shall go forward by its line. The most evident method of securing this result is to collect something more than the net rate for the transportation of the raw material to the transit point upon delivering such raw material to the indus-

try, the excess collection to be credited upon the rate for the
201 forwarding of the finished product from such point. In such cases it is evident that the industry must pay a penalty if it uses any other means of transporting the finished product than the one provided by the carrier which transported the raw material. An analysis of the transit tariffs filed with us show that the arrangement is in many cases not a privilege at all, but a burden upon the industries to which it applies. Such an arrangement frequently amounts to a requirement by the carrier that the industry shall in advance put up a bond that the finished product shall be forwarded by such carrier's line.

This competitive policy of the carriers, which results in many unnecessary transit arrangements, has also resulted in many pretended transit arrangements which can not be justified as such. We have before us, for instance, tariffs which provide for the forwarding of agricultural implements, vehicles, etc., as the transit of inbound shipments of logs. Unless all tariffs are to become "transit tariffs," such arrangements as those last mentioned must be condemned as unlawful. An agricultural implement is bound to be largely composed of other materials than wood, and may be entirely composed of such other materials. It is a manufactured product, having its first being at the factory where it is made. Its shipment from the factory is not in any proper sense a continuation of the shipment of the log from the forest to the mill.

In conclusion.—The hearing has failed to demonstrate that the Commission's ruling was too strict. It has demonstrated that various practices, as above outlined, have resulted in the violation of published rates, to the injury of shippers not taking advantage of such practices. Fraud can not be defined in this matter of abuse of transit any more than in any other line of activity. The Commission will not undertake to frame a code of transit rules. The traffic officials of the carriers have the duty and the responsibility under the law of initiating rates. They all agree in the statement that the system of rates devised by them is impracticable, and will result in great injury to carriers and business interests unless exceptions and privileges in the nature of transit are introduced. The Commission does not condemn the transit privileges as such, but it does hold that the responsibility for safeguarding and policing them, to the end that the lawfully published rates shall be collected, rests entirely upon the carriers. This is not saying that shippers will be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of the carriers to collect such rates. Except in very rare instances, carriers give rebates or concessions only upon
solicitation by shippers. In such case the liability of the
202 carrier yielding to the solicitation is no greater or different than that of the shipper making it. The language of the law is:

It shall be unlawful for any person, persons, or corporation to offer, grant or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any

property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation whether carrier or shipper who shall knowingly offer, grant or give or solicit, accept or receive any such rebates, concessions or discrimination shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one thousand nor more than twenty thousand dollars.

It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges. They may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates. Such certifications, however, do not excuse carriers from determining for themselves and at their peril that shipments carried at other than the regular local rates from the point of shipment are entitled to the exceptional or transit rates. Carriers will not be allowed to put in transit privileges either through competition with each other, or through the desire to hold local rates up to the highest possible point, without taking entire responsibility for the results of such privileges and the uses made of the same.

The Commission is convinced that if the carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now, while the elimination of these arrangements will decrease their expense of bookkeeping and supervision and will be for the benefit of all the industries affected. The Commission is also convinced that if carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers and to their final profit. In every case where it is possible to replace transit privileges with flat rates it should be done.

At none of the large warehousing markets are the difficulties in the way of the adoption of a flat-rate system any greater than were those presented at Missouri River points some years ago when the Commission condemned the unlawful arrangements of rates on grain. As a result of the Commission's action the full local rates upon grain to these points are now paid regardless of the final disposition of such grain. Outbound shipments of grain from these points are carried at a flat rate regardless of the point of origin, provi-
203 ing the grain be "from beyond." While still open to some legal objection, the system is far in advance of the system which it succeeded, and is so much in advance of the transit privileges generally throughout the country that it may well be accepted as a model by traffic managers desirous of remedying chaotic and unlawful practices upon their lines. The Commission is convinced that in no other way can transit rates to and from the large storage

markets be arranged unless carriers are to take an impossible burden of policing and supervision and shippers be subjected to extremely annoying rules.

The Commission has been asked by numerous shippers, including the grain dealers along the Ohio River, the grain dealers in intermountain territory, and the lumber and shingle manufacturers of the Pacific coast, to condemn the transit privilege entirely as illegal. This the Commission is not prepared to do, the present order of the investigation affording no warrant for such action.

It is the law which has binding force upon both shippers and carriers in this matter, rather than rulings of the Commission, which simply represent the Commission's view of the law. The Commission's duty is to enforce the law, and this duty it is determined to perform. Ruling 76-A of the Commission, supra, may be taken, together with this opinion, as indicating the Commission's knowledge of the abuses shown by this investigation, and its demand upon both carriers and shippers that these and all similar abuses be prevented. If the abuses are prevented the law will be satisfied. If the abuses are not prevented the law will not be satisfied, no matter how ingeniously the machinery provided obscures the fact that the law is evaded.

We are convinced that shippers and carriers fully understand the Commission's position and their own practices. It is needless to say that the continuance of such abuses as are above outlined will compel the Commission to resort to criminal prosecution, to include both shippers and carriers, to secure obedience to the law rather than to any further or other form of moral suasion.

1093

1212 *Journal entry.*

Proceedings of April 9, 1912.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., PETITIONERS; the Nashville Grain Exchange et al., intervening petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission et al., intervening respondents. } No. 47.

Said cause came on for final hearing on the petition, answers, and proofs, and the arguments of counsel were commenced, Mr. K. T. McConnico appearing on behalf of the intervening petitioners and Mr. Blackburn Esterline on behalf of the United States.

1213 *Journal entry.*

Proceedings of April 10, 1912.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., PETITIONERS; the Nashville Grain Exchange et al., intervening petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission et al., intervening respondents. } No. 47.

Said cause came on for further hearing upon the petition, answers, and proofs, and the arguments of counsel were continued, Mr. Blackburn Easterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. R. Walton Moore on behalf of the petitioners, and Mr. William A. Wimbish on behalf of W. S. Duncan & Co. et al., intervening respondents.

1214 *Journal entry.*

Proceedings of April 11, 1912.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., petitioners; the Nashville Grain Exchange et al., intervening petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission et al., interveners. } No. 47.

Said cause came on for further hearing on the petition, answers, and proofs, and the arguments of counsel were concluded, Mr. Charles

W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. Albert S. Brandeis on behalf of the petitioners. Thereupon the cause was taken under advisement by the court.

1215

Stipulation.

Filed April 11, 1912.

In the United States Commerce Court.

April session, 1912.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, petitioners, and Nashville Grain Exchange and Nashville Board of Trade, intervening petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION AND W. S. DUNCAN & COMPANY et al., intervening respondents. } No. 47.

STIPULATION.

It is hereby stipulated and agreed of record, as follows:

In this cause original photographs and maps and tariffs introduced at the hearing before the Interstate Commerce Commission or introduced or referred to in the evidence in this court, or copies thereof, may be used in original forms, without being reproduced in the printed record in this court and the Supreme Court of the United States.

ALBERT S. BRANDEIS,
R. WALTON MOORE,
Solicitors for Petitioners.
K. T. MCCONNICO,
Solicitor for Intervening Petitioners.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor, Interstate Commerce Commission.
WILLIAM A. WIMBISH,
Solicitor for Intervening Respondents.

1216 *Opinion on final hearing.*

Filed June 7, 1912.

United States Commerce Court.

April session, 1912.

Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, petitioners: Nashville Grain Exchange, Nashville Board of Trade, intervening petitioners:	
v.	No. 47.
United States of America, respondent: Interstate Commerce Commission, W. S. Duncan & Company et al., intervening respondents.	

For opinion of the Interstate Commerce Commission, see 21 I. C. C. Rep., 186. See also 16 I. C. C. Rep., 590, 18th I. C. C. Rep., 280.

Mr. R. Walton Moore, with whom Mr. M. P. Calloway and Mr. C. J. Rixey, jr., were on the brief, for the Nashville, Chattanooga & St. Louis Railway, and Mr. Albert S. Brandeis, with whom Mr. William G. Dearing was on the brief, for the Louisville & Nashville Railroad Company, petitioner.

Mr. K. T. McConnico, with whom Mr. Lee Douglas and Mr. John A. Pitts were on the brief, for the intervening petitioners.

Mr. Blackburn Esterline, special assistant to the Attorney 1217 General, with whom Mr. Winfred T. Denison, Assistant Attorney General, was on the brief, for the United States.

Mr. Charles W. Needham for the Interstate Commerce Commission.

Mr. William A. Wimbish for the other intervening respondents.

ON FINAL HEARING.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and Mack, judges.

[June 7, 1912.]

Carland, *Judge:*

This proceeding was instituted for the purpose of obtaining a judgment annulling an order of the Interstate Commerce Commission made on June 9, 1911, requiring the Louisville & Nashville Railroad Company, hereafter called the L. & N., and the Nashville, Chattanooga & St. Louis Railway Company, hereafter called the N. C. & St. L., to cease and desist for a period of two years from and after August 1, 1911, from granting to Nashville, Tenn., and to dealers

ers in grain, grain products, and hay located at Nashville, the privilege of rebilling or reshipping grain, grain products, and hay from Nashville, so long as said railroads should refuse and refrain from granting said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, Ga., or either of them, and to the dealers in said commodities located in said cities.

The L. & N. owns and operates a line of railroad from
1218 Louisville, on the Ohio River, in Kentucky, to Nashville, Tenn., on the Cumberland River, and from Nashville to Birmingham and Montgomery. Its rails do not reach Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, Ga. It has a line of railroad running from Louisville and Cincinnati to Atlanta, but does not reach Atlanta via Nashville.

The N. C. & St. L. owns and operates a line of railroad from Hickman, Ky., on the Mississippi River, to Nashville, crossing the Tennessee River at Johnsonville, and from Nashville to Atlanta via Chattanooga. Its rails do not reach Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, Ga. The rebilling or reshipping privilege condemned by the order of the commission is as follows:

On grain, grain products, and hay shipped to Nashville by rail from or through Ohio or Mississippi River crossing points such as Louisville, Evansville, Hickman, Paducah, Cairo, etc., the L. & N. and N. C. & St. L. charge the full local freight rate from said crossing points to Nashville. These shipments may then be stopped at Nashville for a period not exceeding six months, during which time they may be rebilled or reshipped to destinations in southeastern and Carolina territory; and on such reshipments so rebilled the freight charges into and out of Nashville are readjusted so that the total transportation charge on any one shipment from any given Ohio or Mississippi River crossing, via Nashville, to any given
1219 destination in said territory, shall exactly correspond with the transportation charge legally assessable on that shipment had it been billed and moved through from its point of origin at the said Ohio or Mississippi River crossing points to its final destination without having been stopped in transit at Nashville.

In the case of W. S. Duncan & Co. et al. *v.* N. C. & St. L. Ry. (16 I. C. C. Rep., 590) the commission held this reshipment privilege above described to be an illegal device by which grain, grain products and hay might be transported at less than the tariff rate applicable thereto, and also that it gave to Nashville an undue and illegal preference and advantage, and subjected other points in the Southeast to unjust and unreasonable prejudice and disadvantage. The order of the commission, however, in the case cited, was held in abeyance until further consideration could be given to the general question of the validity of transit privileges. The matter was further considered by the commission, and in the case entitled "In the Matter of the Substitution of Tonnage at Transit Points" (18 I. C. C. Rep., 280)

the commission refused to condemn transit privileges as such, but notified the carriers that such privileges must be carefully policed so that their use should not violate the law.

In view of the conclusion reached in the case last cited, the commission cited the parties in the case of W. S. Duncan & Co. et al. *v.* N. C. & St. L. Ry. et al. to appear and show cause why the order theretofore issued therein should not be changed and modified
1220 so that it would require the defendants therein to cease and desist from discriminating in any respect whatever between Nashville, Tenn., and Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, and the shippers, consignees, and dealers, respectively, with respect to transit and reshipping privileges and practices as pertaining to grain, grain products, and hay, upon the ground that such discrimination was undue, unreasonable, and unlawful. After a full hearing on this order to show cause, the commission made the order complained of in this proceeding.

The commission, in concluding their report which resulted in said order, used the following language:

"After a careful consideration of all the pertinent facts and circumstances, we are of the opinion and find that the matters and things complained of herein constitute the undue and unreasonable preference and advantage and the undue and unreasonable prejudice and disadvantage as between the parties to this proceeding prohibited by section III of the act to regulate commerce."

We may start, then, with the proposition admitted that the reshipping privilege existing at Nashville is not unlawful in itself or the commission would not have framed the order in the alternative. (Penn Refining Co. v. W. N. Y. & Penn. R. R., 208 U. S., 208.) The discussion of the whole matter seems to be narrowed to two propositions: (1) Is the reshipping privilege existing at Nashville a violation of Section III of the interstate commerce act with refer-
1221 ence to the Georgia points mentioned in the order? (2) The commission having found that it is a violation of said section, may this court review said finding? Section III, above referred to, so far as material to the present inquiry, is as follows:

"That is shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The undisputed facts which gave rise to the establishment of the reshipping privilege at Nashville by the N. C. & St. L. in 1872 and by the L. & N. in 1877 are substantially as follows:

Nashville is located on the Cumberland River about 190 miles above its confluence with the Ohio River, and the Cumberland is

navigable below Nashville for about nine months in the year. The navigable season corresponds with the season for the handling of grain crops. Atlanta is located 289 miles southeast of Nashville, and none of the Georgia points mentioned in the order of the commission are on any navigable stream connecting them with the Mississippi, Ohio, or Cumberland Rivers. Before there were any rail connections between Nashville and the river gateways, such
1222 as Cincinnati, Louisville, Evansville, Paducah, Cairo, Hickman, etc., and before there was even any rail connection between any of these river crossings and Atlanta and the Southeast, the Nashville & Chattanooga Railroad was completed from Nashville to Chattanooga as early as 1854. The cities of Charleston and Savannah contributed largely to the completion of this road and its connections with Atlanta and the seaboard for the purpose, expressed at the time, of connecting the cotton-producing section of the country with the grain fields of the West. The line from Charleston to Atlanta and Nashville was the first line and was and still is the shortest line from the Southeast to the western grain country, and was completed before there was any other rail connection between Nashville and the Southeast, on the one hand, and Cairo, Evansville, Louisville, or Cincinnati on the other. The Nashville & Chattanooga Railroad, as soon as it was completed to Nashville, was the means by which grain and all western commodities were sent into the Southeast. All this traffic of necessity came from the Wabash, Ohio, and Mississippi Rivers and up the Cumberland River by steamboat to Nashville, and was there loaded upon the cars of the Nashville & Chattanooga Railroad, the only rail line into the Southeast at that time.

This movement of grain caused Nashville at that early day to become the concentration point for grain moving through Nashville as the first real gateway, and over the Nashville & Chattanooga Railroad as the first rail line into the Southeast having direct
1223 connections with the western waterways. Vast amounts of grain and other commodities were gathered in this way at Nashville by the boats of the Cumberland River, and transshipped by this first rail line to Atlanta and other points in southeastern territory. This was long before Cincinnati, Louisville, Cairo, or Paducah or any of the other river crossings were grain gateways or concentration points for this trade. There were no rail connections north or west of Nashville until the L. & N. finished its line between Louisville and Nashville in 1859.

At this time the L. & N. Railroad did not extend south of Nashville, and that road did not acquire any line south of Nashville until it leased the road from Nashville to Decatur in 1871, and completed the same to Montgomery in 1879. The Nashville & Chattanooga Railroad did not own a line west and north of Nashville until 1872, when it began to operate 171 miles of railroad running from Nashville west, crossing the Tennessee River at Johnsonville, Tenn., and going to the Mississippi River at Hickman, Ky. This

road then became interested in the hauling of grain and other commodities all the way from the Mississippi and Ohio Rivers on the west to Atlanta and southeastern territory. Prior to that time, the Nashville & Chattanooga Railroad had no interest in how the grain came to Nashville from the Mississippi and Ohio Rivers.

After the Nashville & Chattanooga Railroad became the owner of the line of road from Hickman to Nashville it constructed
1224 and put in operation free elevators on the Tennessee River at Johnsonville and on the Mississippi River at Hickman, and by so doing sought to attract shipments of grain moving from the Mississippi and Ohio Rivers to its 171-mile haul to Nashville and then to carry it to the Southeast. It was found, however, that notwithstanding the establishment of the free elevators at the points indicated, most of the grain from the Wabash, Mississippi, Ohio, and Cumberland River valleys continued to come into Nashvile by boat on the Cumberland River. The boat and rail rate from the Wabash, Ohio, and Mississippi River grain-producing valleys, via Hickman and Johnsonville, to Nashville, was higher than the all-river rate accepted by the boats upon grain from these grain sections up to Nashville. The N. C. & St. L. Railroad was therefore obliged to take some steps to meet this situation in order to protect its railroad running from Nashville west, and to procure the longest possible haul from the grain-producing sections aforesaid to the grain-consuming territory in the Southeast.

The N. C. & St. L. Railroad could have done this in either one of two ways. It could have fixed and accepted a very low local rate from the river crossings up to Nashville, thus meeting the steamboat competition; or it could have established a through rate from the river crossings to the Southeast via Nashville, protecting this through rate by extending the privilege of reshipping at Nashville. It chose to follow the latter course in order better to subserve and protect
1225 its revenues. A very low local rate up to Nashville would have unnecessarily sacrificed revenue. This low rate would have been applicable to all the grain locally consumed at Nashville or points based on Nashville, and if the road had unduly reduced the local rate up to Nashville to meet the steamboat competition it would have been impossible to maintain the existing scale of rates on other commodities besides grain which were going to Nashville in large quantities for local consumption. This was the origin of the reshipping privilege which has existed for forty years at Nashville. It was caused by competition in the shipment of grain from the Mississippi and Ohio Rivers by boat to Nashville on the Cumberland River.

The Cumberland River still exists, and Nashville is still located upon it. For all practical purposes, the situation, so far as competition on the Cumberland River is concerned, is the same potentially as it was in 1872. We must not deceive ourselves by believing that the L. & N. and the N. C. & St. L. extended this reshipping privilege to shippers and dealers at Nashville as a favor to the shippers and deal-

ers or as a favor to Nashville. The simple truth is that the railroads extended the privilege to these shippers and dealers so as to obtain the shipment of grain from Mississippi and Ohio River crossings over their own lines.

The crucial question then is: Were the L. & N. and the N. C. & St. L. compelled to extend the reshipping privilege to grain dealers at Nashville in order to successfully compete with the transportation of grain, grain products, and hay on the Cumberland River? If they were, then the law of the land declares that the granting of the privilege to Nashville and not to Atlanta, where no such competition existed, would not be a violation of Section III of the act to regulate commerce.

1226

We may not annul the order for the reason, if it be so, that Nashville ought to be classed and equalized with Mississippi and Ohio River crossings, nor may we annul it for the reason that Nashville is a natural concentration point or primary market for grain, if it be so, nor on the ground that Nashville is the proper place for stoppage of grain in order to protect the grain itself by handling and drying. We must annul the order, if at all, upon the ground that upon the undisputed facts the law declares that there is no violation of Section III of the act to regulate commerce.

We think that the undisputed facts demonstrate that the reshipping privilege was extended to shippers and dealers at Nashville on account of the competition on the Cumberland River, and on that account alone, and that the undisputed evidence would not support any other finding upon that proposition. It is alleged that the railroads bought into the situation at Nashville and therefore can not be heard to say that they were compelled to meet the Cumberland River competition. This reasoning would prohibit the building of all railroads, as no one would build a railroad if it were to be held that all competition met in the operation of the same should be considered voluntary because the road had been voluntarily built. The unsoundness of such argument does not require demonstration.

1227

In East Tennessee, Virginia & Georgia Railway Co. *v.* Interstate Commerce Commission (181 U. S., 18) the Supreme Court, speaking of the section of the interstate commerce law involved in this case, used the following language:

"The prohibition of the 3rd section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers."

In the same case the Supreme Court said:

"The only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this court; that is, that competition which is real and substantial and exercises a potential influence on rates to a particular point, brings into

play the dissimilarity of circumstance and condition provided by the statute and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place, and that this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say
1228 seemingly on the one hand and apparently on the other, because in the supposed cases the preference is not 'undue' or the discrimination 'unjust.' This is clearly so, when it is considered that the lesser charge upon which both the assumption of preference and discrimination is predicated is sanctioned by the statute, which causes the competition to give rise to the right to make the lesser charge. Indeed, the findings of fact made by the commission in this case leave no room for the contention that either undue preference in favor of Nashville or unjust discrimination against Chattanooga arose merely from the act of the carriers in meeting the competition existing at Nashville."

It is true that the language last above quoted was used in reference to the influence of competition on Section IV of the interstate commerce act before its amendment, but the same reasoning must apply with equal force to cases under Section III, for it has been uniformly held by the courts that the prohibition contained in Section IV is but one of the kinds of competition denounced by Section III. (Texas & Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S., 197; Interstate Commerce Commission v. Alabama Midland Railway, 168 U. S., 144; L. & N. R. R. v. Behlmer, 175 U. S., 648.)

In the recent case of Interstate Commerce Commission v. Delfenbaugh (222 U. S., 42) and Peavey & Co. v. Union Pacific R. R. Co. (176 Fed., 423) it was held that the payment of an elevator charge by a railroad company which is compelled by competition is
1229 lawful. The Interstate Commerce Commission itself has in a large number of cases recognized competition, and especially water competition, as influential upon the establishment of reasonable rates. (Commercial Club of Omaha v. Chicago Ry. Co., 7 I. C. C. Rep., 464; Raworth v. Northern Pacific R. R. Co., 3 I. C. C. Rep., 862; Chattanooga Board of Trade, 10 I. C. C. Rep., 133; E. Senheimer Co. v. Ill. Cen. R. R. Co., 17 I. C. C. Rep., 60; Bulte Milling Co. et al. v. Chicago & Alton R. R., 15 I. C. C. Rep., 351; Monroe Progressive League v. St. L. I. M. & S. Ry., 15 I. C. C. Rep., 534; Indianapolis Freight Bureau v. P. R. R. Co., 15 I. C. C. Rep., 567; Columbia Grocery Co. v. L. & N. R. R., 18 I. C. C. Rep., 502.)

It is earnestly claimed, however, that as the Interstate Commerce Commission found that this reshipping privilege at Nashville was a discrimination against Atlanta and the other Georgia points, that this court is concluded by that finding. In the case of A. T. & S. F. Ry. Co. et al. v. Interstate Commerce Commission (188 Fed., 229) this court said:

"In other words, as in this case, where all the facts are undisputed, we do not think the commission can by an ultimate finding based upon the undisputed facts preclude this court from reaching a conclusion of its own upon such undisputed and admitted facts. When the facts are undisputed, there is no occasioin for the facts to be found, and the ultimate conclusion of the commission is a mixed question of law and fact which certainly ought not to be held to be conclusive upon this court."

1230 Where the facts of a case are admitted and the question is what the judgment of a tribunal shall be upon such admitted facts, the case stands in the same position as if the facts had been found and the question should arise as to what should be the judgment upon the facts so found. This is always a question of law. So in the present instance, the facts being undisputed, the question arises whether these facts show a violation of Section III, and the solution of the question involves a consideration and interpretation of said section which is peculiarly a question of law and within the power of this court to decide.

In Interstate Commerce Commission v. Union Pacific R. R. (222 U. S., 541) it was said by the Supreme Court:

"There has been no attempt to make an exhaustive statement of the principles involved, but in cases thus far decided it has been settled that the orders of the commission are final unless inter alia * * * (3) based upon a mistake of law."

Again, in the case of State of Washington ex rel. Oregon R. R. & Navigation Co. v. H. A. Fairchild et al., the question was presented as to whether, as a matter of law, the facts proved showed the existence of such a public necessity as authorized the taking of property, and the Supreme Court held in that case that the facts did not show the existence of such public necessity, although the Railroad Commission of the State of Washington had found otherwise. The

1231 Supreme Court cited the cases of Kansas City Railway Co. v. Albers Commission Co., Cedar Rapids Gas Light Co. v. Cedar Rapids, and Graham v. Gill, decided by that court but not yet officially reported.

Our conclusion in regard to the whole case is that under the facts appearing in the record the reshipping privilege at Nashville is not in violation of Section III, nor a discrimination in favor of Nashville as against Atlanta and the other Georgia points, and that the facts being undisputed it is within the undoubted power of this court to so declare as a matter of law applicable to such a state of facts.

The order of the Interstate Commerce Commission complained of in this proceeding will therefore be annulled and the motion to dismiss denied. And it is so ordered.

HUNT, Judge, dissenting.

1232

Final decree.

Entered June 15, 1912.

In the United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, Chattanooga & St. Louis Railway, petitioners; Nashville Grain Exchange, Nashville Board of Trade, intervening petitioners,

versus

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, W. S. Duncan & Company et al., intervening respondents.

No. 47.

FINAL DECREE.

This cause came on for final hearing upon the merits and was argued by counsel.

Upon consideration whereof it is now by the court ordered, adjudged, and decreed, for the reasons stated in its opinion, which opinion has been filed and is hereby made a part of the record:

First. That the motion to dismiss, made by the intervening respondents, W. S. Duncan & Company et al., be and the same is hereby overruled and denied.

Second. That the preliminary injunction heretofore awarded be and the same is now made permanent and perpetual.

Third. That the order of the Interstate Commerce Commission made and entered June 9, 1911, and complained of and attacked in this proceeding, was and is illegal and invalid and the same is now wholly set aside and annulled.

And this decree is final.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

To the entry of which decree the said respondent and the intervening respondents, by their respective counsel, severally object and except.

1233

Petition for appeal.

Filed June 17, 1912.

In the United States Commerce Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY, petitioners, and Nashville Grain Exchange and Nashville Board of Trade, intervening petitioners.

v.

UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company, intervening respondents. } No. 47.

PETITION FOR APPEAL.

The United States of America, respondent; Interstate Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company, intervening respondents, feeling themselves aggrieved by the final order or decree of the Commerce Court, entered June 15, 1912, by their respective counsel, pray an appeal to the Supreme Court of the United States from the said final order or decree.

The particulars wherein the United States and the said intervening respondents consider said final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States and the said intervening respondents pray that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

CHARLES W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

WILLIAM A. WIMBISH,
Solicitor for W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company.

1234 *Assignment of errors.*

Filed June 17, 1912.

In the United States Commerce Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND NASHville, Chattanooga and St. Louis Railway, petitioners, and Nashville Grain Exchange and Nashville Board of Trade, intervening petitioners,

v.

UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company, intervening respondents. | No. 47.

ASSIGNMENT OF ERRORS.

Come now the United States of America, respondent; Interstate Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord, Stewart Company, intervening respondents, by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court entered against them June 15, 1912, in the above-entitled cause.

I.

The Commerce Court erred in holding "that upon the undisputed facts the law declares that there is no violation of Section III of the act to regulate commerce."

II.

The Commerce Court erred in holding that upon the admitted facts, the finding and conclusion that undue or unreasonable preference or advantage existed as to Nashville, and that undue or unreasonable prejudice or disadvantage existed as to the
1235 Georgia cities named in the order, was a question of law.

III.

The Commerce Court erred in substituting its judgment for the judgment of the commission upon the question whether the admitted

discrimination in favor of Nashville and against the Georgia cities named in the order, on account of the practice of rebilling and reshipping at Nashville, was an undue or unreasonable preference or advantage to Nashville, and an undue and unreasonable prejudice or disadvantage to the said Georgia cities.

IV.

The Commerce Court erred in holding that water competition at an intermediate point in a through route gave the carriers a legal right to maintain a practice of stopping, unloading and within six months rebilling and reshipping the traffic upon through rates, at such intermediate point, although the Interstate Commerce Commission had determined that said rebilling and reshipping privilege granted at one intermediate point while the carriers refused to grant said privilege to other intermediate points named in the order, gave an undue and unreasonable preference and advantage in favor of the intermediate point at which the privilege was granted, notwithstanding the alleged water competition at said intermediate point.

V.

The Commerce Court erred in overruling the motion to dismiss the petition made by the respondents W. S. Duncan & Company et al., for the reasons set forth in said motion.

VI.

The Commerce Court erred in not dismissing the petition
1236 of the petitioners.

VII.

The Commerce Court erred in annulling the order of the Interstate Commerce Commission referred to in the petition.

Wherefore the United States and the said intervening respondents pray that the said final order or decree of the Commerce Court, entered June 15, 1912, be reversed, annulled, and set aside with directions that the petition be dismissed and for such other and further order as may be appropriate.

GEORGE W. WICKERSHAM,
Attorney General of the United States.
CHARLES W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
WILLIAM A. WIMBRISH,
Solicitor for W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company.

1237

Order allowing appeal.

Entered June 17, 1912.

In the United States Commerce Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY, petitioners, and NASHVILLE GRAIN EXCHANGE AND NASHVILLE BOARD OF TRADE, intervening petitioners,

v.

UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, W. S. DUNCAN & COMPANY, A. P. MORGAN GRAIN COMPANY, J. D. FRAZIER & COMPANY, M. L. & M. W. FAIN, R. W. DAVIS & COMPANY, A. C. WOOLEY & COMPANY, MCCHORD-STEWART COMPANY, INTERVENING RESPONDENTS. } No. 47.

ORDER ALLOWING APPEAL.

In the above-entitled cause, the United States of America, Interstate Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, McChord-Stewart Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered June 15, 1912, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is now ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 17th day of July, A. D. 1912, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

1238 *Præcipe for record.*

Filed June 17, 1912.

In the United States Commerce Court.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY, petitioners, and NASHVILLE GRAIN EXCHANGE AND NASHVILLE BOARD OF TRADE, intervening petitioners,

v.

UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, W. S. DUNCAN & COMPANY, A. P. MORGAN GRAIN COMPANY, J. D. FRAZIER & COMPANY, M. L. & M. W. FAIN, R. W. DAVIS & COMPANY, A. C. WOOLEY & COMPANY, McCHORD-STEWART COMPANY, intervening respondents. } No. 47.

PRÆCIPE FOR RECORD.

To the clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court, entered June 15, 1912, and include in said transcript the following pleadings, proceedings, and papers on file or of record, to wit:

Aug. 24, 1911. Petition for injunction in No. 46, and notice.

Oct. 17, 1911. Exhibits to petition in No. 46.

Aug. 24, 1911. Petition for injunction in No. 47, and notice.

Aug. 31, 1911. Appearance of Interstate Commerce Commission in No. 46.

Aug. 31, 1911. Appearance of Interstate Commerce Commission in No. 47.

Sept. 21, 1911. Order extending time to answer in No. 46.

Sept. 21, 1911. Order extending time to answer in No. 47.

1239 Sept. 22, 1911. Amendment to petition in No. 46.

Oct. 13, 1911. Affidavit to amendment to petition in No. 46.

Sept. 22, 1911. Amendment to petition in No. 47.

Oct. 13, 1911. Affidavit to amendment to petition in No. 47.

Sept. 23, 1911. Motion to dismiss for want of jurisdiction in No. 46.

Sept. 25, 1911. Stipulation to strike out certain exhibits and portion of petition and the order thereon in No. 46.

Sept. 25, 1911. Stipulation to strike out certain exhibits and portion of the petition and the order thereon in No. 47.

Sept. 27, 1911. Petition of intervention of W. S. Duncan & Company et al. in No. 47 and order granting the same.

Oct. 2, 1911. Appearance of William A. Wimbish for W. S. Duncan & Company et al. in No. 47.

Oct. 4, 1911. Answer of United States to the petition as amended in No. 47.

Oct. 4, 1911. Answer of the Interstate Commerce Commission to the petition as amended in No. 47.

Oct. 7, 1911. Motion to dismiss on behalf of W. S. Duncan & Company et al. in No. 47.

Oct. 10, 1911. Notice of application for temporary injunction in No. 46.

Oct. 10, 1911. Notice of application for temporary injunction in No. 47.

1240 Oct. 17, 1911. Replication to answer of United States in No. 47.

Oct. 17, 1911. Replication to answer of Interstate Commerce Commission in No. 47.

Oct. 24, 1911. Opinion on motion for temporary injunction and motions to dismiss in Nos. 46 and 47.

Oct. 24, 1911. Order entered consolidating Nos. 46 and 47 and suspending the order of the Interstate Commerce Commission.

Nov. 24, 1911. Answer of W. S. Duncan & Company et al.

Feb. 1, 1912. Testimony taken before Judge Mack in Commerce Court Nov. 27, 28, and 29, together with all exhibits appertaining thereto, including the evidence before the Interstate Commerce Commission.

Apr. 11, 1912. Stipulation, re photographs, etc.

June 7, 1912. Opinion of the Commerce Court on final hearing.

June 15, 1912. Final decree.

June 17, 1912. Petition for appeal.

June 17, 1912. Assignment of errors.

June 17, 1912. Order allowing appeal.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
CHARLES W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
WILLIAM A. WIMBISH,
Solicitor for W. S. Duncan & Company et al.

1241 United States Commerce Court.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., PETITIONERS; The Nashville Grain Exchange et al., intervening petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION et al., intervening respondents. } No. 47.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to

1240, inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above entitled cause, made in accordance with the praecipe filed in the office of the clerk of said court on the 17th day of June, 1912, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of the United States Commerce Court this 3d day of July, A. D. 1912.

G. F. SNYDER, *Clerk.*

1242

Citation on appeal.

UNITED STATES OF AMERICA, *ss:*

To Louisville and Nashville Railroad Company, a corporation; Nashville, Chattanooga and St. Louis Railway, a corporation; Nashville Grain Exchange, a corporation, and Nashville Board of Trade, a corporation:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America, Interstate Commerce Commission, W. S. Duncan & Company, A. P. Morgan Grain Company, J. D. Frazier & Company, M. L. & M. W. Fain, R. W. Davis & Company, A. C. Wooley & Company, and McChord-Stewart Company are appellants and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 17th day of June, A. D. 1912.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 17 day of June, A. D. 1912.

ALBERT S. BRANDEIS,
Solicitor for Louisville and Nashville Railroad Company.

R. WALTON MOORE,
MERRIL P. CALLAWAY,
C. J. RIXEY, JR.,
Solicitors for Nashville, Chattanooga and St. Louis Railway.

K. T. MCCONNICO,
PITTS & MCCONNICO,
LEE DOUGLASS,
Solicitors for Nashville Grain Exchange, a corporation, and Nashville Board of trade, a corporation.

(Indorsement on cover:) File No., 23281. U. S. Commerce Court. Term No., 706. The United States of America, Interstate Commerce Commission, W. S. Duncan & Company et al., appellants, vs. Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, Nashville Grain Exchange, and Nashville Board of Trade. Filed July 8th, 1912. File No., 23281.

○

FILED.
DEC 7 1912
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

UNITED STATES OF AMERICA, APPELLANT; Interstate Commerce Commission, W. S. Duncan & Co., A. P. Morgan Grain Co., J. D. Frazier & Co., M. L. and M. W. Fain, R. W. Davis & Co., A. C. Wooley & Co., and McChord-Stewart Co., intervening appellants,

v.

LOUISVILLE & NASHVILLE RAILROAD Company and Nashville, Chattanooga & St. Louis Railway, appellees; Nashville Grain Exchange and Nashville Board of Trade, intervening appellees.

No. [redacted]

APPEAL FROM THE UNITED STATES COMMERCE COURT.

MOTION BY THE UNITED STATES TO ADVANCE.

The Solicitor General on behalf of the United States moves to advance this case.

The appeal is from a final decree of the Commerce Court entered June 15, 1912, permanently

enjoining the enforcement of an order of the Interstate Commerce Commission and annulling the same.

The railroads operating south of the Ohio and east of the Mississippi Rivers publish their rates on grain, grain products, and hay from the river crossings into southeastern territory. Nashville is an intermediate point and is also situated on the Cumberland River. By reason of certain alleged water competition on the Cumberland River, and in order to meet or destroy the same, the railroads adopted the practice of stopping, unloading, and within six months rebilling and reshipping this traffic at Nashville on the through rates from the river crossings.

Certain shippers and consumers at Atlanta and other Georgia points complained that the practice was building up the trade and business of Nashville and making of it a great commercial center and destroying the trade and business of Atlanta and the other Georgia points. The railroads admit that a preference and discrimination exists, with effective results. The Interstate Commerce Commission, after full investigation, found that the practice as carried on at Nashville (and withheld from Atlanta and other Georgia points) resulted in an undue and unreasonable preference and advantage in favor of Nashville and an undue and unjust discrimination against Atlanta and other Georgia points.

The questions presented are:

First. Whether or not this conceded preference and discrimination is "undue" within the meaning of the act to regulate commerce is a question of fact to be determined by the Interstate Commerce Commission (the United States contending that it is), or a question of law to be determined by the Commerce Court (the railroads contending that it is). The Commerce Court held it was a question of law, and, on the merits, decided against the United States.

Second. If it is a question of law to be determined by the Commerce Court, whether or not the Commerce Court erred in reversing the finding of the Interstate Commerce Commission and annulling its order.

The public interests are involved, and the priority suggested is authorized by section 2 of the act of June 18, 1910, 36 Stat. 542.

Due notice of this motion has been served upon counsel for the appellees.

WM. MARSHALL BULLITT,
Solicitor General.

6 DECEMBER, 1912.

O

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1912

NASHVILLE PLEADINGS

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted]

THE UNITED STATES OF AMERICA ET AL., Appellants,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, NASHVILLE GRAIN EXCHANGE, AND NASHVILLE BOARD OF TRADE, Appellees.

[illegible]

BRIEF FOR THE UNITED STATES

In support of the contentions of [illegible] the evidence in the record and [illegible] between appellees and [illegible] [illegible] [illegible]

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In the Supreme Court of the United States.

OCTOBER TERM, 1912. NO. 706.

THE UNITED STATES OF AMERICA ET AL., *Appellants*,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, NASHVILLE GRAIN EXCHANGE, and NASHVILLE BOARD OF TRADE, *Appellees*.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR THE UNITED STATES.

The question involved is whether a certain so-called reshipping or rebilling privilege of grain, grain products, and hay which the railroads have given to the grain dealers at Nashville, Tenn., is an undue or unreasonable preference or advantage to that locality, and thereby subjects Atlanta, Ga., and other Georgia localities, to an undue or unreasonable prejudice or disadvantage, in violation of section 3 of the interstate commerce act, which provides (24 Stat. 379, 380):

> SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any par-

> ticular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Interstate Commerce Commission had the subject under consideration from 1908 until 1911, took about 600 printed pages of testimony, rendered three reports, and finally reached the conclusion that the practice, when properly policed by the carriers to prevent rebates, might be continued at Nashville, but, if so, that its privileges must also be extended to Atlanta and other Georgia localities.[1]

[1] The history of this litigation (so far as it relates to the reshipping privilege only) may be thus summarized:

1. In 1908 certain Georgia grain dealers complained to the Interstate Commerce Commission of various traffic practices at Nashville (R. 2); after taking voluminous proof, the Commission, on June 24, 1909, held the reshipping privilege illegal and ordered it stopped (Opinion Rec. 1058, 1063; 16 I. C. C. Rep. 590, 595; Testimony Rec. 523–693).

2. The Commission, on its own motion, postponed the effective date of the order, so that it might institute a country-wide investigation of the practices involved; and on May 3, 1910, the Commission, after a hearing at which about 150 shippers and carriers were represented by counsel, reported that its former order abolishing the reshipping privilege *in toto* was too strict, and remitted the matter to the carriers and shippers to frame regulations that would prevent any rebating under the privilege (Rec. 1080–1097; 18 I. C. C. Rep. 280); and, pursuant thereto, new and satisfactory regulations were adopted to safeguard the reshipping privilege (R. 1072; 21 I. C. C. Rep. 183, 188).

3. In the light of its altered attitude toward the reshipping privilege, the Commission vacated its order of June 24, 1909,

In view of the elaborate briefs filed by other parties and the history of the controversy given in the margin, we may go directly to the merits of the case.

---

which had abolished the reshipping privilege at Nashville and then proceeded to take up anew the controversy between the grain dealers of Georgia and the Nashville dealers and carriers, and a large amount of additional testimony was taken. (R. 695–966.)

On June 9, 1911, the Commission delivered a Supplemental Report, holding that the action of the carriers in granting the reshipping privilege to Nashville, while refusing it to Atlanta, etc., was an undue and unreasonable preference to Nashville, in violation of section 3 of the interstate commerce act. (Rec. 1070–1077; 21 I. C. C. Rep. 186.) The Commission entered an order in accordance therewith. (Rec. 1078.)

4. The Nashville Board of Trade, the L. & N. R. R. Co., and the N. C. & St. L. R. R. Co. thereupon sued in the Commerce Court to enjoin the enforcement of the order (R. 1, 65); the two suits were consolidated (R. 147); all the testimony before the Interstate Commerce Commission was read in evidence (R. 164, 521–1097); some of the same witnesses were recalled and gave additional testimony (R. 153–488), and the Atlanta interests introduced one new witness, who gave some brief evidence (R. 488–514); so that the Commerce Court had before it the exact evidence the Commission had acted on, and a substantial repetition of it by some of the same witnesses, and practically nothing new.

The Commerce Court disagreed with the Interstate Commerce Commission and held that as there was no conflicting evidence, the question whether or not the preference was "undue," was a question of law; that the Commission had erred; that the reshipping practice at Nashville was justified by the alleged fact that it had been inaugurated forty years ago on account of water competition; that it was not unduly preferential for Nashville; and peremptorily enjoined the commission's order. (R. 1101–1109.)

The United States appealed.

STATEMENT OF THE CASE.

1. Grain coming from the producing regions of the Northwest to the consuming region of the Southeast (Georgia, Alabama, Carolinas, Florida, etc.) must cross the Ohio or Mississippi River. Until comparatively recently those rivers were the dividing line between the railroad companies of the North and South, no company extending its lines across the river; and for many years the gauge was different, so that freight had to be shifted to different cars. As the result of that physical and historical condition, those rivers became the basis of rate making. The through rates are the same through all the crossing points, whether the grain goes via Memphis, Cairo, Evansville, Louisville, or Cincinnati; and the through rates are said to break at those rivers, to wit, are made up of (*a*) the rate from the Northwest origin to the river **plus** (*b*) the rate from the river to the Southeast consuming point.

As the route is longer via one route than another, and the northern roads all had the same rate to the river, the roads south of the river make such an equalization of the rates South as to make the total *through* rates the same.[1] Therefore, at the river crossing points, there is what might be termed a *natural* reshipping privilege; for, remembering that the through rate is (1) the sum of the rate from the Northwest to the river **plus** (2) the rate from the

[1] See Rec. 425, 426, for an explanation of the method.

river to the Southeast, a dealer at Memphis, Cairo, Louisville, etc., on receiving grain, can unload, clean, classify, and sack it; and, without losing anything by the process, he can then reship it to the Southeast consuming market for the rate from the river to such market. His total freight rate is simply the through rate from the Northwest to the river plus the through rate from the river to the Southeast destination.

2. The railroads undertook to put Nashville grain dealers, two or three hundred miles South of the river, in the same traffic position as if they were located on the Ohio or the Mississippi River,[1] by giving to the Nashville dealers an *artificial* reshipping privilege as follows:

The railroads allowed the Nashville dealers to bring grain from then Northwest to Nashville at the rate which was (*a*) the rate from the Northwest to the river crossing point, **plus** (*b*) the local rate from the river to Nashville; then the Nashville

[1] Or, as Mr. Compton, traffic manager of the L. & N. R. R., expressed it (R. 590), "It simply places Nashville and the merchants and dealers of Nashville in a position to compete with the various Ohio and Mississippi river crossings, and with the merchants and dealers located thereat"; but he did not add the necessary consequence, namely, that the railroads were thereby giving Nashville something she was not entitled to, and all to the great prejudice of Atlanta and other cities who are as much entitled as Nashville to be placed on a par with dealers at the Ohio and Mississippi River crossing points.

The railroads seem to forget that it is none of their business to seek to put one town in a position it is not fairly entitled to.

dealers could unload, clean, classify, and sack it and reship it to Southeastern points in Georgia, etc.; but instead of being required to pay the local rate from Nashville to such southeastern destination, the railroads would *rebate in cash to the dealer* enough of that local rate to make the total through freight bill (from the Northwest origin to Southeastern destination) the through rate between origin and destination; that is to say, the Nashville dealer was allowed to ship his grain from Nashville to destination *at less than the published tariff*. The railroads seek to justify it on the theory that they consider the stoppage at Nashville as nonexistent, and that in paying the rebate they are simply adjusting things so as to give the Nashville dealer the benefit of the "through" rate, although the grain does *not* in fact go "through" but is stopped and may be held at Nashville for six months before reshipment.

One or two illustrations will make the practice clear:

Rate Ohio River (Louisville) to Nashville	10 cents
Rate Nashville to Augusta, Ga	19 cents
	29 cents
But railroad pays 3 cents cash rebate to the Nashville dealer, thus reducing the rate from Nashville to Augusta to less than the published tariff	3 cents
Actual cost to Nashville dealer	26 cents
Through rate Ohio River to Augusta, Ga	26 cents

Or again:

Through rate Ohio River to Milledgeville, Ga	28 cents.
Ohio River to Nashville	10 cents
Nashville to Milledgeville	21 cents
Rate Nashville dealer ought to pay	31 cents
But railroad pays cash rebate	3 cents
Actual rate to Nashville dealer	28 cents

In that way the Nashville dealer is enabled to transport grain from the Ohio River to the small consuming points in Georgia (with a 6-months stop-over privilege at Nashville to clean, sack, await a better market, etc.) at the same cost as if it went straight through from the Ohio River to destination. And the Nashville dealer is paying 3 cents less than the published rate for sending grain from Nashville to such destination.[1]

[1] Obviously such an arrangement is also a violation of section 2 of the commerce act, for it enables one Nashville dealer to load a car of sacked grain at Nashville and send it to, say, Augusta, for 16 cents, while a rival Nashville dealer who happened to have bought his grain at Nashville, has to pay 3 cents more, to wit, 19 cents, for sending an exactly similar car of sacked grain on the same train to the same destination, Augusta. In short, for exactly the same service, the railroad charges one dealer 16 cents and another 19 cents—the only difference being that in one instance the grain had been brought to Nashville six months before from Louisville, while in the other it had been secured locally from farmers about Nashville.

But while there is such violation of section 2 of the act, this brief will be devoted to the violation of section 3, where the discrimination is not between rival Nashville dealers but between dealers at Nashville and those at Atlanta, etc.

3. The dealers in Atlanta and other Georgia towns complained that by granting this reshipping privilege to Nashville, the railroads were giving her an undue preference over the Georgia towns, because, for example, the Atlanta grain dealer in order to supply grain to a near-by store, had to pay as follows:

Ohio River to Atlanta	24 cents.
Atlanta to Newman	7½ cents.
Total	31½ cents.

The Nashville ought to pay the published tariff rates as follows:

Ohio River to Nashville	10 cents.
Nashville to Newman Ga	22 cents.
Ohio River to Newman	32 cents.

Whereas, the Nashville dealer would (if there were no reshipping privilege) pay 32 cents, but by virtue of the reshipping privilege, the Nashville dealer could clean, classify, sack, etc., his grain, and reach Newman by the through rate from the Ohio River of 29 cents, as follows:

Ohio River to Nashville (local)	10 cents.
Nashville to Newman (local)	22 cents.
	32 cents.
Cash rebate paid by railroad to Nashville within 6 months	3 cents.
	29 cents.

In that way, obviously, a Nashville grain dealer, solely by favor of the railroads, could have such an advantage over the Atlanta dealer (who had to pay the full local rate to Atlanta and full local rate out of Atlanta) that the latter could not compete with a

Nashville dealer. Hence, this controversy is between the grain dealers of Atlanta (backed by the Government and the Interstate Commerce Commission) and the grain dealers of Nashville (backed by the railroads).

It presents the old familiar case of the railroads, for reasons of their own seeking, granting favors to one locality that are denied to others.

The various connecting roads have stated of record that rather than extend the reshipping privilege to Atlanta, etc. (as authorized by the commission), they would abolish the privilege at Nashville; so that the question presented is simply whether or not Nashville shall continue to have this highly favored privilege, which simply gives to her (in addition to any advantages she may have by location) the extra artificial advantage of being on the Ohio River when she is really hundreds of miles therefrom. (Brief for N., C. & St. L. Ry. Co., pp. 35, 36; Brief for L. & N. R. Co., pp. 45, 46.)

Although a vast amount of the absurdly voluminous record is taken up with a duplication of documents and testimony, and with evidence as to Nashville being (1) a primary grain market, (2) entitled to be equalized with Ohio River crossings, and (3) so located as to be just the right place to grant reshipping privileges, both the commission (R. 1074) and the Commerce Court (R. 1106) rejected those views; and the whole case turns on the single question of an ancient alleged water competition, to be now explained.

Effect of water competition on the Cumberland River.

The railroads claim that the reshipping privilege at Nashville was not accorded voluntarily, but (as though that were an excuse) was forced upon them as the means they adopted to meet water competition some 40 years ago.

In the early development of the western country the railroads were projected from the East towards the West. Therefore grain was brought by wagons or water from the Northwest until it reached a railroad to carry it to the Southeast. The progressive development of the railroads is admirably shown in a series of maps representing the railroad conditions in 1850, 1855, 1860, 1865, 1870, 1875, and 1880. (R. 800–806.)

Without stopping to point out some of the facts which plainly contradict the theory of the railroads, but taking their own statement of the matter, we have the following alleged situation:

In the early days grain was (1) shipped by a roundabout rail route from the Mississippi River to the Southeast or (2) brought by wagon and boat up the Cumberland River to Nashville and shipped by rail from there to the Southeast over the N., C. and St. L. Ry. Co.

About 1872 the N., C. & St. L. Ry. Co. acquired as part of its system a direct all-rail route from the Mississippi River to the Southeast; and it shortly thereafter put in the "reshipping" privilege at Nashville; which, in 1877, was also adopted by the L. & N. R. R.

Co., which had a line from the Ohio River to Nashville. It is not clear why the L. & N. R. R. Co. was several years late in adopting the practice.

The railroads now claim by the testimony of several employees (who, however, speak chiefly from hearsay and inferences as to the causes, because at that time they were mere clerks who knew nothing of the reasons actuating the higher officials) that the reason for adopting the "reshipping" practice was to meet the water competition up the Cumberland River.

The contention of the railroads is that the boat rate from the Ohio River to Nashville (where the cleaning, drying, classifying, sacking, etc., could be done as a natural incident to the transfer from boat to rail) plus the local rail rate from Nashville to the Southeast *was less than* the local rail rate from the Ohio River to Nashville plus the local rail rate from Nashville to the Southeast; and that, therefore, in order to meet the water competition, they had to do one of two things, namely, (1) make a low local rate from the Ohio River to Nashville to meet the water rate, or (2) give the shipper an all-rail through rate from the Ohio River to the Southeast which would meet the boat rate plus the local out of Nashville, and at the same time extend to such shipper the same privilege of cleaning, drying, classifying, sacking, etc., which he would have if he used the water route.

The railroads, instead of reducing the local rate to Nashville to meet the competing water rate, chose to maintain its local rates, but to make a low through

rate—and to extend to Nashville the privilege of taking the grain off the cars, cleaning, drying, sacking, etc., and then reshipping it on the through rate.

Decision of the Interstate Commerce Commission.

1. *The alleged water competition is not the cause of the "reshipping" privilege.* The commission said (R. 1075):

> There seems to be nothing connected with this privilege in its actual practice in this country which makes it dependent upon location upon navigable waters. In fact, but an insignificant portion of the total number of points where it is practiced are so located, and many cities north and west of the Ohio and Mississippi Rivers enjoy the privilege either as a primary or distributive market, irrespective of location upon navigable waters or of other competitive conditions.

2. *The "reshipping" privilege does not reduce rates to meet the water competition.* The commission said (R. 1074–1075):

> In meeting the river competition on this grain traffic from the Northwest, the carriers have not reduced the rates to Nashville in competition with the river, but they have left that city to the enjoyment of what traffic could be moved to that point at river rates of transportation for local consumption * * *.
>
> In respect to this river competition it is important to note that it has not in fact reduced the rate to Nashville, nor the rate from

the crossings to the Southeast, nor the rate from Nashville to the Southeast. The reshipping plan seems to have pretty well destroyed this river competition without reducing materially these charges. The evidence is to the effect that reshipping was adopted to secure to the railroads a portion of the business. As to this immensely valuable through business from the Northwest to the Southeast, it has absorbed practically all. In fact, under present conditions, with the cost of transshipment from rail to river and from river to rail, this water competition is greatly nullified.

3. *Nashville is given an undue preference over other localities.* The commission said (R. 1074, *et seq.*):[1]

> By the adoption of the reshipping privilege at Nashville, commercial preference and advantage have been accorded the interests there engaged in supplying the immense territory to the Southeast with its increasing consuming power * * *.

[1] The commission also said (R. 1075):

Considering particularly the traffic involved in this case, namely, the transportation of grain, grain products, and hay from the grain-growing region lying to the north and west, to the consumers of the Atlantic States of the Southeast, there are many characteristics of similarity between Nashville and complainant cities which are obvious and predominating. They are all located in a section which consumes a portion of the excess production of grain and its products produced in a more or less distant part of the country. This condition of affairs naturally invites those with capital and business inclination to participate in the enterprise of supplying this demand. Both Nashville and the complainant cities are close to the consumers, and the testimony is that

It appears of record that complainant cities are laboring under great disadvantage in competition with Nashville while the business thrives and prospers at Nashville, and whatever other cause may contribute toward producing this result, the fact remains that Nashville does have these various privileges contained in the tariffs of defendants, and that she is the only city in the Southeast enjoying them * * *.

We find that in the light of comparison with the other cities in the Southeast, Nashville is not so dissimilarly situated with respect to this particular traffic as to entitle it to be singled out and exclusively granted the important and extremely valuable privileges denied to its competitors. It seems to us remarkable and unusual that the carriers, in their tariffs, should have preferred one of these points to another in the handling of this profitable business. That their tariffs are contrary to the provisions of the statute we have no doubt, as we do not find anywhere in the record a substantiation of the existence of such condi-

they are in strong competition for even the smallest trade of the retailers and consumers. Nashville is, of course, peculiarly benefited by the exclusive use in this territory of this reshipping privilege in connection with the further practice of the carriers of charging the same rate whether the shipment is a carload or a single barrel of flour or bale of hay. The testimony is that the distant markets at the river crossings confine themselves to the larger wholesale trade of the Southeast, and, therefore, there is not the same character of competition between the crossing points and the southeastern cities as exists between the cities in the Southeast themselves.

tions of dissimilarity at Nashville as would justify giving the sanction of the Commission to an adjustment which accords these very valuable privileges to one city of the Southeast and denies them to every other city south of the Ohio River and east of the Mississippi.

4. *Nashville business would not be destroyed, but only placed on its proper competitive footing.* The commission said (R. 1076):

> At the hearing it was strongly urged that the commission should not disturb the existing arrangements, because grain dealers at Nashville have invested large sums in facilities for handling the business located upon the lines of defendants, and, therefore, discontinuance of transit privileges at Nashville would work an enormous destruction of values amounting to confiscation * * *.
>
> Admitting, however, that the carriers should find it necessary for their purposes to take out the privilege at Nashville, we feel that the benefit to be derived by all parties and interests concerned by a due observance of the statute would in and of itself justify the action; and, further, that the results on the business at Nashville would not be as dire and chaotic as is represented by the defendants.

5. *The reshipment privilege is maintained not really to meet water competition (which is negligible), but to increase the railroads' revenues.* The commission said (R. 1074):

> The present adjustment promotes both the local and the through grain business and

> adroitly keeps the line of cleavage between them clear and distinct. The grain moving into Nashville locally, via the river and otherwise, can hardly compete with the through business to the Southeast under the present tariffs, and grain moving into and out of Nashville under the transit privilege can not very well compete with the local industry. This twofold adjustment leaves little more that could be done to put Nashville on an advantageous basis as compared with all rivals in that territory.

Summing it all up, the commission held that taking all the factors into consideration, especially the conditions now existing, rather than those of 40 years ago, as to modes of transportation, etc., the granting of the privilege to Nashville, while withholding it from Atlanta and other cities substantially similarly situated, was an undue preference in violation of section 3 of the act.

Decision of the Commerce Court.

The Commerce Court held that in its inception 40 years ago the reshipping privilege was granted by the railroads in order to obtain the traffic from the Ohio River to the Southeast in competition with the combination water and rail route; and that such being the case, the continued physical existence of the Cumberland River to-day still rendered the practice proper regardless of the subsequent adoption of the Interstate Commerce Act, which prohibited undue preferences between localities. (R. 1105, 1106.)

In so holding, the Commerce Court ignored those factors to which the Interstate Commerce Commission in its finding of facts gave controlling weight, to wit: (1) The changed conditions whereby "under present conditions, with the cost of transshipment from rail to river and from river to rail, this water competition is greatly nullified" (R. 1075); (2) that there is "nothing connected with this [reshipping] privilege in its actual practice in this country which makes it dependent upon location upon navigable waters" (Id.); (3) that the "river competition has not in fact reduced the rate to Nashville, nor the rate from the crossings to the Southeast, nor the rate from Nashville to the Southeast" (Id.); (4) that "there are many characteristics of similarity between Nashville and complainant cities which are obvious and predominating" (Id.); (5) that Nashville and the complainant cities are close to the consumers and "in strong competition for even the smallest trade of the retailers and consumers" (Id.); (6) and that Nashville was not so dissimilarly situated from its competitors as to entitle it to be singled out and exclusively granted this extremely valuable privilege which was denied to all its competitors (R. 1077).

The Commerce Court put the alleged ancient reason for granting the reshipping privilege ahead of all other considerations.

ASSIGNMENT OF ERRORS.

The eight errors assigned (R. 1111) bring in question the following two propositions, which the Government asserts:

I. The finding by the Interstate Commerce Commission that the reshipping privilege constituted an undue preference in favor of Nashville and against Atlanta is such a finding of fact as to be conclusive and not subject to judicial review.

II. Even if subject to reexamination here, the reshipping privilege is an undue preference in favor of Nashville; and the alleged water competition at an intermediate point affords no justification therefor.

FIRST POINT.

The finding of the Interstate Commerce Commission that the reshipping privilege constituted an undue preference in favor of Nashville had substantial evidence to support it; is a finding of fact, and is therefore conclusive on this court; and is not open to reexamination.

The Interstate Commerce Act forbids carriers to give any undue preference or advantage to one locality over another (sec. 3), and whenever, after full hearing, the commission shall be of the opinion that any regulation or practice is unduly preferential to one locality, it may order the carrier to desist from such practice, and it may prescribe the practice to be followed in the future (sec. 15).

After full hearing, the commission decided that the reshipping privilege given at Nashville and

denied at other localities was unduly preferential to Nashville, and it ordered that the practice cease as long as the other named localities were denied it. (R. 1079.) Is that finding one of fact? Is it supported by substantial evidence?

Treating these in reverse order:

1. *There is substantial evidence to support the finding that the practice unduly prefers Nashville over Atlanta and other Georgia towns.* There are hundreds of pages of testimony which establish without any contradiction that, as the result of the reshipping privilege, Nashville gets lower rates and can therefore deliver freight to consuming points cheaper than Atlanta and other towns can deliver it, although the freight in each instance goes exactly the same distance over exactly the same route; in short, for precisely the same service, the railroads charge the Atlanta dealer a higher rate than the Nashville dealer. The facts establishing the resultant preference are undisputed. Some illustrations are given on page 8, supra. Some of the facts establishing the discrimination are collated in the margin.[1]

[1](*a*) Newman, Ga., is 39 miles south of Atlanta. Atlanta can not sell in Newman in competition with Nashville at the same price, because the rate from Nashville to Newman is less than Atlanta gets, and that condition has obtained for a year. (R. 547, 548.)

(*b*) Atlanta can still ship to within a radius of 50 miles as cheaply as the points can be reached from Nashville or Louisville on the through rate. There is no territory to which Atlanta has an advantage over Nashville. (R. 548.)

(*c*) When Nashville reaches a point on the same rate that Atlanta does, Nashville gets the allowance of $3 a car ele-

The right of the commission to make the order at all depends upon the existence of an undue preference; but it is not for the court to say whether this jurisdictional fact actually exists. The rule is this: If there were *no evidence* to show that Nashville had

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vation or sacking and $2 switching. Atlanta can not compete in Palmetto (south of Atlanta) with a $5 handicap, as that is very nice profit on a solid car of goods. (R. 548, 549.)

(*d*) Nashville has an advantage of $12 to $21 a car to Newman, Griffin, West Point (south of Atlanta), and similar points, and Atlanta can not compete. (R. 549.)

(*e*) Nashville now sells in that territory and solicits business in and around Atlanta. Atlanta traveling men find quotations of Nashville almost every day in every point. (R. 550.)

(*f*) The inability of Atlanta to reach those points is because of the through rate made from Nashville and the Ohio River to those points. (R. 553.)

(*g*) When Atlanta was selling in Griffin (south of Atlanta), it was competing with a $3 rate, and now it has to compete with a $15 rate, which is decidedly more than the profit. (R. 554.)

(*h*) If a man at Nashville buys a carload of flour and breaks the car at Nashville into 40 different consignments to various southeastern destinations, and a man at Atlanta buys a car at Louisville and ships it to Atlanta and then reships and sends it to 40 different destinations, the Nashville dealer would get the rebilling privileges on all of the 40 different shipments and the Atlanta dealer would have to pay the allowance on the 40 different shipments; and the difference in cost between a shipment in carload and that carload broken up into 40 different shipments is, in the clerical labor to the railroad company, about 40 times as much, nominally; and the same would be true as to loading and unloading. (R. 555.)

(*i*) If it were not for the increased population through which Atlanta is permitted to distribute, the merchant would find himself restricted in his purchasing ability. His

an undue preference over Atlanta, etc., there would be no jurisdiction to make the order (*Int. Com. Com.* v. *Northern Pacific Ry.*, 216 U. S. 544; *Int. Com. Com.* v. *L. & N. R. Co.*, 227 U. S. 88, 92); but if there be any substantial evidence to show an undue preference, the determination of the fact by the commission is

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purchasing power would have been taken away from him and it would all accrue to Nashville. (R. 558.)

(*j*) Atlanta is getting less territory year by year and month by month. The business is going to Nashville, when Atlanta could take care of it on the same economic basis as Nashville if accorded the same privilege as Nashville. (R. 558, 559.)

(*k*) The situation has grown more acute of late on the general proposition that competition gets stronger in general lines of business every year. If a community has an advantage over another community, it strengthens the larger community and weakens the disadvantaged community, and, with the advantages that they give, Nashville shows profits by giving more publicity for working trade extending to the merchants and calling their attention to it. If the dealers in Nashville have an advantage, it is natural that they are going to work it. (R. 566.)

(*l*) Under the rebilling privilege, Nashville goes to within 5 miles of Atlanta in its territory at a less rate than Atlanta has. (R. 570.)

(*m*) Nashville has also become more aggressive in the last few years, as there are about 42 grain dealers in Nashville now where a few years ago there were only 10 or 15. (R. 572.)

(*n*) Although within the last three years the population of Atlanta has increased about 60,000 within the city limits, it is doing less business this year in grain, grain products, and flour than it has done for the last three years. If rail rates were the same, it could distribute the business to the Georgia and Carolina territory with greater facility and with greater economy than Nashville. (R. 572.)

(*o*) The privilege of rebilling is of great value. (R. 573.)

(*p*) The rate from Cairo to Nashville is 11 cents and from

conclusive and not subject to reexamination by the court.

The commission's finding, whether right or wrong, had substantial evidence to support it; and therefore the weight of the evidence is not open to reexamination here.

Nashville to Atlanta 17 cents; total, 28 cents. Instead of Nashville paying 28 cents they pay 24 cents. (R. 577.)

(*q*) Atlanta has more railroads and could be made a greater distributing center than Nashville if the same rates were applied. (R. 578.)

(*r*) The carload business has been taken away from Augusta. It has been almost impossible for Augusta to sell grain and flour and the like of that. Nashville has been very zealous to get the trade of Augusta and has cut down the business very much. (R. 582.)

(*s*) The rate from Nashville to Augusta is 19 cents on class D. The rate from Augusta to Bamberg is 13 cents; total, 32 cents. The rate from Nashville to Bamberg is 29 cents. It costs Augusta 32 cents to make a shipment from Nashville to Bamberg, and it costs Nashville 29 cents. Bamberg is 60 miles below Augusta, has no competition, and is just a local station on the Southern Railway. (R. 582.)

(*t*) The same relative difference that applies on flour in barrels applies to other things, and that illustrates the general conditions with reference to all these products. (R. 582.)

(*u*) Flour in barrels from Nashville to Bamberg is 59 cents, to Augusta 38 cents, and the local is 28 cents—total, 66 cents, giving Nashville a 7-cent differential against Augusta to this little village. (R. 583.)

(*v*) The Nashville people just seem to have gone out on all sides. Instead of there being 12 to 14 dealers there now, there are 55 or 56. There are more people after the business. They have this advantage, and they are keeping the advantage. They took away the carload business first, and now they are getting after the other. Atlanta had a little rebilling once, but it did not last long. It had an appreciable effect on the business. (R. 585.)

We next proceed to ascertain whether the finding is one of fact (not open to question here) or is one of law that may be reexamined.

2. *The Commission's finding that an undue preference exists is a finding of fact, not of law, and therefore is conclusive here.*

We will assume for the purposes of argument that the facts and circumstances are undisputed. From them the Commission made the finding of ultimate fact—or, as it is sometimes called, the *inference* from the admitted facts—that the preference or advantage in favor of Nashville was "undue and unreasonable." Unless such conclusion is based on a clear mistake of law, *i. e.*, misconstruction of some controlling feature of the statute, it must be deemed as final—for that is just what the Commission was created to determine. There is no excuse for its existence except to decide just such things, because its knowledge and experience peculiarly fit it to reach a correct conclusion on the conceded facts.

If, for example, the Commission had declined to hear evidence as to the water competition on the ground that it did not affect the matter, a different question might be presented, but it not only heard the evidence, but gave it full weight, and after taking all the facts and conditions into consideration decided that the preference was "undue." (R. 1075–1077.)

Therefore, under the decisions of this court, the question whether or not the concededly existing

preference is "undue" is a question of fact foreclosed by the findings of the commission.

It must be remembered that under the reshipping privilege there is no dispute that (1) a Nashville dealer may ship grain from Nashville to a Georgia town cheaper than an Atlanta dealer can have grain shipped by the same train over the same route from Nashville to the same Georgia town; (2) a Nashville dealer can ship grain from the Ohio River to Georgia towns, with the "stop-over" privilege at Nashville to clean, etc., cheaper than an Atlanta dealer can ship grain with a similar "stop-over" privilege at Atlanta; (3) that Nashville (drawing its supplies from precisely the same base as Atlanta) can, solely by virtue of this railroad favoritism, undersell Atlanta right in Atlanta territory.

The commission held that if a Nashville dealer and an Atlanta dealer each buy a car of grain at Louisville to sell at (say) Newman, Ga., it is an undue preference for the Nashville dealer to be allowed to ship with a "stop-over" cleaning privilege for a less cost than the Atlanta dealer—the railroad service in each instance being *absolutely identical*.

Interstate Commerce Commission v. *Illinois Central Railroad Company* (215 U. S. 452), held that an undue preference resulting from the distribution of coal cars was a question of fact. In *Baltimore & Ohio Railroad Company* v. *United States* (215 U. S. 481) it was held that an undue preference resulting from the method of distributing coal cars is a ques-

tion of fact requiring previous exertion of power by the Commission before the courts have jurisdiction to review. In *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western Railroad Company* (220 U. S. 235) it was held that "the finding of the Commission that to permit the enforcement of the rule [between car-lot shippers and forwarding agents] would give rise to preferences and engender discriminations prohibited by the act to regulate commerce embodies a conclusion of fact beyond our competency to reexamine." In *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Railway Company* (218 U. S. 88) it was held that a rate adjustment involving water competition ordered by the Commission was within its power, and that the reasonableness of rates fixed with reference thereto was a question of fact. *Interstate Commerce Commission* v. *Louisville & Nashville Railroad Company* (227 U. S. 88), held that the nature and extent of water competition, and the weight to be given thereto, whether little or much, was a question of fact.

No more extended review of the authorities is necessary. If there is one thing which may now be considered as settled law, it is that any practice which the railroads adopt that in the opinion of the Commission (upon a full hearing of all the facts surrounding the operation of such practice) is productive of discrimination between shippers or localities, the Commission may order it stopped and substitute a new regulation of its own.

This court will not set aside such order unless it is clearly the result of a mistaken construction of the act to regulate commerce.

REVIEW OF THE COMMERCE COURT'S ERRONEOUS THEORY.

The Commerce Court held:

First. There was no conflicting testimony; that the facts being admitted, there was no room for the exercise by the Interstate Commerce Commission of any independent judgment or discretion whatever, but that it was a pure question of law what the rights of the parties were, which a court should decide for itself without regard to the opinion of the Commission. (R. 1108.)

Second. That, *as a matter of law*, the fact that thirty-odd years ago the railroads had granted the reshipping privilege to meet water competition, relieved the preference from being undue or unreasonable, and authorized its continuance to-day.[1]

Such views must be rejected.

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[1] The Commerce Court said (R. 1106–1108):

Where the facts of a case are admitted and the question is what the judgment of a tribunal shall be upon such admitted facts, the case stands in the same position as if the facts had been found and the question should arise as to what should be the judgment upon the facts so found. This is always a question of law. So in the present instance, the facts being undisputed, the question arises whether these facts show a violation of Section III, and the solution of the question involves a consideration and interpretation of said section which is peculiarly a question of law and within the power of this court to decide. * * *

We think that the undisputed facts demonstrate that the reshipping privilege was extended to shippers and dealers at Nashville on account of the competition on the Cumber-

1. *Such a theory would practically destroy the Interstate Commerce Commission.* If, on an undisputed state of facts (*i. e.*, where there is no conflict of testimony between witnesses) a dispute between a railroad and a shipper under the statute is "always a question of law," so that the order to be entered on a controversy between them is "peculiarly a question of law and within the power of this court to decide," then the great purpose of the act is defeated. Because in many, if not most, of the controversies between the railroads and the shippers, the facts are really not disputed; they depend on certain fixed physical facts, *i. e.*, geographical location, volume of traffic, rates charged, cost of operation, trade conditions, etc.; things which are not past events as to which witnesses may differ, but existing conditions which are not open to controversy; and it is easily conceivable that the record before the Commission might not contain a single fact as to which the witnesses testified differently.[1]

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land River, and on that account alone, and that the undisputed evidence would not support any other finding upon that proposition. * * *

Our conclusion in regard to the whole case is that under the facts appearing in the record the reshipping privilege at Nashville is not in violation of Section III, nor a discrimination in favor of Nashville as against Atlanta and the other Georgia points, and that the facts being undisputed it is within the undoubted power of this court to so declare as a matter of law applicable to such a state of facts.

[1] The cases of *Int. Com. Comm'n* v. *D., L. & W. R. R. Co.*, (220 U. S., 235), (Forwarders agency); *Int. Com. Comm'n* v. *Ill. Central* (215 U. S. 452), (distribution of coal cars); *B. & O.* v. *U. S.* (215 U. S. 481) might easily have been such cases.

Such cases may be, therefore, easily reducible to an undisputed state of facts, upon which it must be determined whether the admitted rate, practice, or regulation is reasonable or unreasonable, discriminatory or not, preferential or fair.

Now if, in such cases, it is, as the Commerce Court says it is, a mere question of law, what judgment should be entered between the parties concerning the regulation, practice, or rate in controversy, so that any decision of the Commission is reviewable by the courts, then there would be but little for the Commission to do, and absolutely no use in its making a finding if, in turn, its finding was reviewable because only a question of law was involved.

The very purpose of the creation of the Commission was that an experienced administrative body should be able to decide finally, even on undisputed facts, as to the rights of the parties under the statute.

The true rule is that (1) if there is any substantial evidence to sustain the Commission's finding or (2) if (the facts being admitted) they are reasonably open to the inference which the Commission draws from them as to their effect under the statute, then, and in such event, the finding of the Commission is final and can not be disturbed.

The Commerce Court reduces the Interstate Commerce Commission to a jury to pass on the credibility of witnesses and disputed questions of fact, leaving the court then to apply the statute to the facts as found by the Commission; it eliminates any power of the

Commission to determine on the conceded facts what sort of order should be made; and the Commerce Court holds that if the testimony in any controversy does not involve the credibility of witnesses but merely establishes perhaps a vast and complicated condition of facts, no matter how great the interlocking and interdependent relation of the facts to each other may be, the Commission is nothing more than a referee to take testimony and to report its conclusions, but leaving the court then absolutely free to reject the conclusions and decide the case for itself. Congress never intended thus to limit the power of the Commission; it never intended to give the courts any such power; the intention was that even on an admitted state of facts the Commission should have the right to decide whether or not upon such facts the particular rate, regulation, or practice was unreasonable, preferential, or discriminatory; and the only function intended to be left to the court was to say, *first*, whether there was any substantial evidence from which such conclusion might be deduced, and, *second*, whether any positive principle of law prescribed by the statute had been ignored or misapplied.

The Government, therefore, insists that the first proposition of the Commerce Court in this case, to wit, because the facts were undisputed the court was therefore entitled to determine whether such facts showed a violation of the provision against undue preference, is erroneous. The Government further insists that it is for the Commission, and not for the court, to decide whether the undisputed facts con-

stitute an undue or unreasonable preference or advantage in favor of one locality over another.

2. *Where the facts are undisputed, it is essentially one of the functions of the Interstate Commerce Commission to determine what is the correct order to make, and its conclusion is binding unless based on some mistake of law.* From what has been said, we think it follows as a corollary that when the question is whether, on a given state of facts (where there is no conflicting testimony), the rate charged is reasonable or unreasonable or the regulation in dispute is unduly discriminatory or not, the finding of the Commission is final. One of the great purposes of the act was to create a specially trained administrative body that could determine what was best for the public as a whole, with due regard for railroads, shippers, and consumers; and whose rulings would be final. It was never intended to let either railroads or shippers appeal to the courts to say that a different rule would be better, and such a result can not be indirectly attained by saying that because the facts are undisputed the ruling to be made becomes a question of law for the courts, rather than a question of fact for the Commission.

In conclusion, the Government submits that as the Commission found that the reshipping practice resulted in an undue preference to Nashville, the Commerce Court erred in setting aside the order.

It remains to consider whether, in reaching its conclusion, the Commission acted on any erroneous principle of law that is subject to review. That will now be dealt with.

SECOND POINT.

The preference given to Nashville over Atlanta and other Georgia towns can not be justified by the alleged fact that the reshipping privilege was originally granted to meet water competition; or that such water competition still exists.

The Commerce Court held, as a controlling legal principle, that because the reshipping privilege was originally granted on account of water competition, and the Cumberland River is still there, it could be continued; and that the resulting discrimination in favor of Nashville was not "undue," the finding of the Commission to the contrary notwithstanding.

1. *The evidence is by no means undisputed that the reshipping privilege was originally installed to meet water competition.* It is enough to say that the testimony on this subject is largely based on hearsay and inferential deductions by persons who, at the time, were subordinates without real knowledge as to the causes.

The Commission certainly held that, because of changes in transportation methods and in general business conditions since 1870, the water competition had been "greatly nullified," and indeed that there seemed to be no relation between water competition and reshipping privileges. (R. 1075.) Therefore, we insist that the basis of the Commerce Court's opinion is removed, and the facts are not absolutely admitted and undisputed.

2. *The mere fact that the railroads may have been justified in 1872 in granting Nashville a reshipping*

privilege is absolutely no evidence that it is now lawful. The Commerce Court apparently held the reshipping privilege was *necessarily* legal now, *because* it was proper in 1870.[1] It is enough to cite *Armour Packing Co* v. *United States*, 209 U. S. 56, and *L. & N. R. R. Co.* v. *Mottley*, 219 U. S. 467, to establish the proposition that questions of undue preference, etc., under the Interstate Commerce act must be determined by present conditions, absolutely without regard to what conditions existed prior to 1887. This disposes also of all the elaborate claims that Nashville merchants invested large sums of money on the strength of the advantages gained by the reshipment privilege.

3. *The mere potentiality of water competition does not justify a preferential regulation or practice. The water competition which will justify a preference must be actual and substantial, not merely conjectural.* There is nothing in section 3 about "substantially similar circumstances and conditions"; and, therefore, it is only by analogy that the railroads can seek to import into section 3 a proviso that water competition may in some cases justify a regulation that would

[1] The Commerce Court said (R. 1106):

The crucial question then is: Were the L. & N. and the N. C. & St. L. compelled to extend the reshipping privilege to grain dealers at Nashville in order to successfully compete with the transportation of grain, grain products, and hay on the Cumberland River? If they were, then the law of the land declares that the granting of the privilege to Nashville and not to Atlanta, where no such competition existed, would not be a violation of Section III of the act to regulate commerce.

otherwise be deemed undue. Assuming, for the purposes of argument only, that the prohibition in section 3 against undue preferences is limited to localities "under substantially similar circumstances and conditions," and that therefore water competition may at times exempt a particular practice from the condemnation of section 3, we submit that the question is necessarily one of fact, depending upon the particular circumstances of each case. "The competition relied upon [must] be not artificial or merely conjectural, but material and substantial"; and even then only when, taking all things into consideration, the public interest is best subserved by permitting the regulation—things which the commission is especially designed to decide. (*L. & N. R. R. Co.* v. *Behlmer*, 175 U. S. 648, 673–5; *I. C. C.* v. *L. & N. R. R. Co.*, 190 U. S. 273, 282–3.) Where, as here, it merely appears that years ago the river competition may have been an important factor in the situation and had to be met by the railroads, it can not be concluded, as a matter of law, that such would be its effect to-day if the reshipping privilege were discontinued. Indeed, in view of the increasing necessity of rapidity in transportation, it may be doubted whether, in the absence of further evidence on the point, such an inference of fact would be justifiable at all.

And the Commission found as a fact that the water competition *was negligible* and did not place Nashville in such a dissimilar situation as to justify the preference.

4. *Assuming, however, that the river competition is controlling to-day, that fact does not give the carrier a right to meet such competition by means of the reshipping privilege, where, as here, a nonpreferential though less profitable means was open to the carrier.* The water competition was between the Ohio River and Nashville. The natural way to meet it (if it really existed) would be to reduce the local rate between the Ohio and Nashville. That course would be proper under the long-and-short haul clause, etc. Instead of adopting that method the carriers did not try to meet the competition (evidently because it was negligible), as it would have merely reduced their revenues without gaining any additional traffic, but used it as a cloak to grant Nashville a great commercial preference over other cities. The Commission thus aptly explained the effect (R. 1074):

> In meeting the river competition on this grain traffic from the Northwest the carriers have not reduced the rates to Nashville in competition with the river. * * * By the adoption of the reshipping privilege at Nashville, commercial preference and advantage have been accorded the interests there engaged in supplying the immense territory to the southeast with its increasing consuming power. In other words, the present adjustment promotes both the local and the through grain business and adroitly keeps the line of cleavage between them clear and distinct. The grain moving into Nashville locally via the river and otherwise can hardly compete

with the through business to the Southeast under the present tariffs, and grain moving into and out of Nashville under the transit privilege can not very well compete with the local industry. This twofold adjustment leaves little more that could be done to put Nashville on an advantageous basis as compared with all rivals in that territory.

In respect to this river competition it is important to note that it has not in fact reduced the rate to Nashville, nor the rate from the crossings to the Southeast, nor the rate from Nashville to the Southeast.

The Commerce Court says that the carrier adopted the reshipping practice "in order better to subserve and protect its revenues"; that "a very low local rate up to Nashville would have necessarily sacrificed revenue"; and thereby assumed that the carrier had an absolute right to choose the more profitable of the two methods. Such an assumption is wholly wrong, for it ignores the only rule by which an otherwise obnoxious preference may be justified by water competition. That rule is that *between two points* where there is competition a carrier may give a preferential rate, because the advantage exists anyway by reason of natural competitive conditions at the favored point, whereby the shipper there would secure the better rate or privilege from another carrier, even if the defendant were inhibited from granting it; in other words, that the preference is caused by conditions beyond the carrier's control. (*East Tenn., Va. & Ga. Ry. Co.* v. *I. C. C.*, 181 U. S. 1, 18–19.)

This is not so here, and the preference granted is not with reference to the route where the competition exists (i. e., between the Ohio and Nashville), which alone can justify the preference, but it is with reference to another route (i. e., Nashville to Georgia), where the water competition does *not* exist! So we have the remarkable condition of a railroad refusing to meet competition where it exists, and yet using its existence as an excuse to grant a preference where the competition does not exist.

If the reshipping privilege were removed, Nashville shippers would be obliged to make their shipments by the prevailing local rates, precisely like shippers elsewhere; and this would hold good whether the river competition was met by the roads or not. The advantage now held by Nashville would thus be wiped out completely; indeed, that very contingency is what makes the Nashville shippers contest the Commission's order so vigorously. The reshipping privilege at Nashville, then, was not compelled by the river competition.

In response to the possible suggestion that we must consider the traffic from the Ohio to Georgia as a whole, and that reshipment does meet the combined water-rail competition, we reply that a preference can only be justified with reference to the particular portion of the route where the competition exists, and that it can not be withheld at one place where it might be lawfully granted for the purpose of being tacked on at another where it could not be properly

granted. No such system of debits and credits is permissible.

The mode adopted is further violative of the principle that the mere fact of competition, regardless of its character or extent, does not relieve a carrier from the operation of section 3, but that, on the contrary, the public welfare as well as the interest of the carrier must be looked to in order to determine in a given case whether competition justifies the preference. (*I. C. C.* v. *Alabama Midland Ry.*, 168 U. S., 144, 167; *E. Tenn., Va. & Ga. Ry. Co.* v. *I. C. C.*, *supra*, 19–20; *L. & N. R. Co.* v. *Behlmer*, *supra*, 673–675.)

It can hardly be contended that the "public interest" referred to in these cases is primarily the interest of the community which enjoys the preferential treatment complained of. Nor is the interest of the carrier a sufficient justification for adopting a mode of competition which resulted in prejudice to all communities competing with Nashville in the grain trade.

5. *Water competition to an intermediate point in a through journey does not justify any preference for any portion of the journey except between the competitive points.* That readily follows from the principles just discussed.

6. *The ruling of the Commission was inherently correct.* Even if this court will reexamine the evidence to determine whether on the conceded facts the preference is *undue*, we submit that the greatest weight should be given to the conclusion of the Commission

that, taking all things into consideration, Nashville was not entitled to this preference over Atlanta. Unless, *as a matter of law*, the mere potentiality of water competition between the Ohio River and Nashville (which is actually nonexistent and under modern conditions could probably never be formidable) is sufficient to justify the railroads in granting a privilege to Nashville, which enables a dealer there to ship grain (*not* from the Ohio to Nashville), but *from Nashville to Georgia* (where there is *no* water competition) for three cents less than the published tariff rate, we submit that the finding of the Commission that the preference is *undue* should be adopted; and we therefore rest our case on its finding of fact instead of reviewing the evidence to point out in detail all the reasons for such conclusion.

RESPONSE TO THE BRIEFS OF APPELLEES.

1. The railroads and Nashville Board of Trade contend that even if the reshipping privilege be abolished, Nashville will still have a natural advantage over Atlanta, and therefore there is no reason to abolish it. (L. & N. R. R. Co.'s brief, p. 39, *et seq.*; N. C. & St. L. Ry. Co.'s brief, p. 66.) It is a *non sequitur*. Nashville is entitled to any natural advantages, but because she will have them even with the undue preference abolished, it is no reason to perpetuate such preference. Rather, is it a reason to stop it, so that Nashville will be limited to her natural advantages only.

2. In response to the suggestion that the Commission acted on outside information not introduced at the hearing (L. & N. R. R. Co.'s brief, p. 47; Nashville Board of Trade brief, p. 7), it is sufficient to observe that the quotations relied on from the pleadings in the Commerce Court do not establish that the commission acted on any secret or outside evidence, but merely mean that from its general experience it reached the conclusion that the reshipping privilege under the conceded facts was "undue." The commission's mind was not intended to be a *tabula rasa* when each case was presented to it. The very purpose of its creation was to have a body so trained and informed as to give a better decision than a less well-fitted person could.

CONCLUSION.

The decree of the Commerce Court should be reversed.

WM. MARSHALL BULLITT,
Solicitor General.

FEBRUARY 24, 1913.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
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No. 39

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, W. S. DUNCAN & COMPANY ET AL., APPELLANTS,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, NASHVILLE GRAIN EXCHANGE, AND NASHVILLE BOARD OF TRADE, APPELLEES.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

CHARLES W. NEEDHAM,
Assistant Solicitor for the Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1913

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE UNITED STATES OF AMERICA, Interstate Commerce Commission, W. S. Duncan & Company et al., appellants,

v.

LOUISVILLE & NASHVILLE RAILROAD Company, Nashville, Chattanooga & St. Louis Railway Company, Nashville Grain Exchange, and Nashville Board of Trade, appellees.

No. 706.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

STATEMENT OF FACTS.

The petition in this case seeks to annul, enjoin, and set aside an order of the Interstate Commerce Commission entered on the 9th day of June, 1911. The principal controversy before the Commission, and the Commerce Court, was regarding the following

QUESTION.

Does water competition at an intermediate point in a through route, which competition does not affect or control the through rate, constitute a ground, amounting to a legal right, for maintaining a rebilling privilege, which privilege constitutes an undue and unreasonable preference and advantage to such intermediate point, and subjects other localities to undue and unreasonable prejudice and disadvantage?

PARTIES BEFORE THE COMMISSION.

The proceeding in which the order was entered was instituted before the Commission by W. S. Duncan & Company, and forty-one other firms and individual complainants, located at Atlanta and the other Georgia cities named in the order. The carriers complained against are the appellees and twelve other railroad companies named in the order. (Record, pp. 1048, 1078.) The complainants are wholesale dealers in grain, grain products, and hay; they purchase these commodities at what are known as the Mississippi and Ohio River crossings—Memphis, Cairo, Paducah, Evansville, Louisville, and Cincinnati—the principal markets for the grain, grain products, and hay destined to what is designated as the Southeastern Territory. The Southeastern Territory includes the whole of Georgia, South Carolina, Florida, and parts of Alabama, Tennessee, and North Carolina; this territory consumes two million tons per annum of the products named.

APPELLEES' LINES.

The appellee Louisville & Nashville Railroad Co. operates a main line of railroad from Cincinnati, Ohio, through Louisville, Ky., Nashville, Tenn., Birmingham and Montgomery, Ala., to New Orleans, La., with a branch from a point near Birmingham to Atlanta; a line from Cincinnati through Knoxville to Atlanta; a track from St. Louis, Mo., through Evansville to Nashville, and another branch from Memphis, Tenn., to its main line near Bowling Green. In connection with these trunk lines it owns and operates connecting lines and short branches extending to several other points. It also owns a majority of the capital stock of the appellee company Nashville, Chattanooga & St. Louis Railway. (Record, p. 517.)

The appellee Nashville, Chattanooga & St. Louis Railway operates lines of road from Memphis, Tenn., and Hickman, Ky., on the Mississippi River, and from Paducah, Ky., on the Ohio River, through Nashville and Chattanooga, Tenn., to Atlanta, with a branch to Rome, Ga. This road has branches to several other points.

The appellees do not reach, with their own rails, the other Georgia points named in the order. They do reach all of the points through connecting carriers who are parties with them to through routes and joint rates.

THROUGH ROUTES AND JOINT RATES.

The fourteen carriers, defendants in the proceedings before the commission, respectively own and operate

lines of railroad constituting, by traffic and tariff arrangements, through routes from the river crossings to all the important points in the Southeastern Territory. (See map, last page this brief.) Through routes and joint rates, and all practices affecting the carriage, are required by statute to be stated in the published tariffs. A practice such as rebilling or milling-in-transit, applying to traffic over a through route, can be maintained by one carrier only by the concurrence of all other carriers who are parties to the through route and joint rate. It follows, therefore, that a rebilling or milling-in-transit privilege may be established at any point upon any one line by the concurrence therein of the carriers constituting such through route, and such practices can be continued only so long as the carriers affected agree to its maintenance.

There are many through routes and joint rates from the river crossings to points of destination in the southeastern territory; there are hundreds of points that enjoy these through routes and joint rates; no difference is made between carload and less-than-carload quantities, the purpose of the rate structure being to facilitate the sale, transportation, and delivery of these products from the river crossings to every point of consumption in the southeastern territory.

These joint rates are made, wholly and exclusively, by the competition from the river crossings. Local competition at an intermediate point does not affect the rate. Dealers who buy at the river crossings

and sell at different points in the southeastern territory have a decided advantage in freight rates if they can transport and deliver over a through route at the joint rate. Dealers who are compelled to ship their grain from the river crossings to their place of business, an intermediate point, and then reship to customers at points of final delivery, are at a decided disadvantage because they are compelled to pay the through rate to their own city and then the local rates to the points of final destination. The reasons why a dealer ships to his own city and unloads the grain are, (1) to enable him to mix grains of different qualities, so as to bring the whole up to a given grade; (2) when the grain is moist, to dry and treat it, and (3) to take advantage of the markets, buying at favorable times and holding the grain to meet favoring demands. The rebilling privilege at an intermediate point assures to the dealers at that point all these advantages—the lowest through rate, elevation, storage, and time. One cent per 100 pounds represents a fair dealer's profit. (Record, p. 250.)

The complainants before the commission contended that a rebilling privilege at Nashville, when the privilege was denied to the Georgia cities, was unlawful; that it gave undue and unreasonable preference and advantage to Nashville dealers, and subjected the dealers at the Georgia cities to undue and unreasonable prejudice and disadvantage.

REBILLING PRIVILEGE DEFINED.

This rebilling privilege is defined by the appellees in their petition (Record, p. 68) as follows:

> Petitioners aver that their tariffs, by which the said rebilling or reshipping arrangement at Nashville is maintained, provide, in substance, that on shipments of grain, grain products, and hay transported to Nashville from Mississippi and Ohio River crossings, and beyond, the local rate to Nashville shall be paid; that the shipments may be stopped at Nashville for not exceeding a period of six months, at any time during which they may be rebilled from Nashville to final destination, and that any shipment so rebilled shall be assessed with the local rate from Nashville to destination, but that in respect to any such reshipment there shall be a refund of a part of the local rate paid on the shipment to Nashville, so that as a result the total transportation charge thus accruing on any shipment from any given Ohio and Mississippi River crossing via Nashville to any given destination corresponds exactly with the transportation charge assessable on the shipment had it been billed to move through from the crossing to destination without being stopped at Nashville, and whether or not it moved via Nashville.

Nashville being an intermediate point upon two of the through routes from the river crossings to the Southeastern Territory, its grain dealers can buy these products at the river crossings, ship to Nashville, elevate, store, and treat the grain, take advantage of market conditions for a period of six months, and

ship to every point of consumption in the Southeastern Territory upon through, and therefore the lowest, rates from the river crossings to all points. The Georgia dealers, as above noted, in order to mix and treat their grain and take advantage of the markets, are compelled to ship to their own elevators, then reship to the same points of consumption, paying the local into their own city and the full local out, the combination making a total charge which exceeds the through rate accorded to the Nashville dealer of from three to seven cents per 100 pounds. (Exhibit A to this brief.)

This discrimination, caused wholly by the rebilling privilege at Nashville, is not and can not be denied. The lawful tariffs of the carriers on file, and in evidence in this case before the commission and the Commerce Court, show the necessary and inevitable results as to each particular route and point.

WATER COMPETITION AT NASHVILLE.

In defense of the rebilling privilege, causing this discrimination, the appellees contend that there is water competition to Nashville, and that such competition justifies, and confers the right to maintain, the rebilling privilege at Nashville while they, and the other concurring lines, refuse to establish the same privilege at the Georgia cities. This contention raises the main question at issue. Does water competition at an intermediate point in a through route, which does not affect or determine the through rate, constitute a ground, amounting to a legal right, to maintain the rebilling privilege?

FULL HEARING.

The complainants and the several defendant carriers appeared before the commission upon two occasions and a full hearing was given to the parties; twenty-six witnesses testified; a great number of statistics, maps, and statements were presented, together with the tariffs involved. The transcript of the record before the Interstate Commerce Commission, including pleadings and evidence, is contained in the record herein, beginning at page 521 and extending to and including page 1057. The fact that the rebilling privilege produced discrimination and preference was not denied, the issues being whether the discrimination was unlawful, undue, or unreasonable. The validity of an alleged discriminatory privilege consisting of an allowance of three-fourths of a cent per 100 pounds for elevation out of the through rate to Nashville was involved, but this question was held in abeyance, and is not now under consideration.

The validity of the rebilling privilege *per se* was the subject of a special investigation in a proceeding entitled In the Matter of Substitution of Tonnage at Transit Points. (18 I. C. C., 280; Record, p. 40.) This question is not involved in this hearing. It is admitted that a rebilling privilege is lawful when properly policed and administered, and when it does not operate to violate the provisions of either Section II or III of the act to regulate commerce.

REPORTS BY THE COMMISSION.

Coming, now, to the reports and order in controversy. The commission found first, on June 24, 1909, that the rebilling privilege was unlawful, unduly discriminatory and preferential, and ordered it discontinued at Nashville. (Record, pp. 23 to 24, inclusive, 16 I. C. C. Rep., 590.) This order was afterwards suspended to await the result of an investigation into the rebilling privileges allowed by many carriers throughout the country; this investigation was decided May 3, 1910 (Record, p. 40; 18 I. C. C. Rep., 280), and on the 29th day of June, 1910, the parties in this case were notified to appear before the commission on the 27th of September, 1910, and show cause why the original order should not be modified so as to require the defendant carriers "to cease and desist from discriminating, in any respect whatever, between Nashville" and the Georgia cities named, by the use of the rebilling privilege. (Record, p. 54.) This hearing was had, and, on June 9th, 1911, the report and order in controversy were entered. (Record, pp. 55 to 64; 21 I. C. C. Rep., 186.)

FINDING AND ORDER.

Upon the evidence the commission found that —

> * * * the granting to dealers at Nashville, in the State of Tennessee, the privilege of rebilling or reshipping grain, grain products, and hay, from Nashville, whereby grain moving through Nashville may be unloaded and held not longer than six months and then shipped

> on at the through rate from origin to final destination instead of at the sum of the rates into and out of Nashville, which rebilling or reshipping privilege has been more particularly described in the report made and filed in this case, while denying said privilege to dealers in Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, all located in the State of Georgia, is unlawful and gives undue and unreasonable preference and advantage to Nashville and to the dealers in grain, grain products, and hay located at Nashville, and subjects Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, and the dealers in grain, grain products, and hay located at said cities, to undue and unreasonable prejudice and disadvantage. (Rec. p. 63.)

Upon this finding, set forth in the order and in the report which is made a part of it, an order was entered, which is in the following words:

> *It is ordered*, That the above-named defendants be, and they severally are hereby, notified and required to cease and desist, on or before the 1st day of August, 1911, and for a period of at least two years thereafter abstain, from granting to Nashville and to the dealers in grain, grain products, and hay located at Nashville the privilege of so rebilling or reshipping said products from Nashville so long as said defendants refuse and refrain from granting the said privilege of rebilling or reshipping grain, grain products, and hay to Atlanta, Columbus, Macon, Cordele, Albany,

Valdosta, Dublin, Montezuma, Rome, and Athens, or either of them, and to the dealers in said commodities located at said cities. R. p. 63.)

DECISION BY THE COMMERCE COURT.

The Commerce Court stated the rebilling privilege as follows:

> On grain, grain products, and hay shipped to Nashville by rail from or through Ohio or Mississippi River crossing points, such as Louisville, Evansville, Hickman, Paducah, Cairo, etc., the L. & N. and N. C. & St. L. charge the full local freight rate from said crossing points to Nashville. These shipments may then be stopped at Nashville for a period not exceeding six months, during which time they may be rebilled or reshipped to destinations in southeastern and Carolina territory; and on such reshipments so rebilled the freight charges into and out of Nashville are readjusted, so that the total transportation charge on any one shipment from any given Ohio or Mississippi River crossing, via Nashville, to any given destination in said territory shall exactly correspond with the transportation charge legally assessable on that shipment had it been billed and moved through from its point of origin at the said Ohio or Mississippi River crossing points to its final destination without having been stopped in transit at Nashville. (R. p. 1102.)
>
> * * * * *
>
> We may start, then, with the proposition admitted that the reshipping privilege existing at Nashville is not unlawful in itself, or the

> commission would not have framed the order in the alternative. (Penn. Refining Company *v.* W. N. Y. & Penn. R. R. Co., 208 U. S., 208.) The discussion of the whole matter seems to be narrowed to two propositions: (1) Is the reshipping privilege existing at Nashville a violation of section III of the interstate-commerce act with reference to the Georgia points mentioned in the order? (2) The commission having found that it is a violation of said section, may this court review said findings? (Rec. p. 1103.)
>
> * * * * *

The issue was whether the admitted discrimination was undue and unreasonable; upon this question the court further said:

> Where the facts of the case are admitted and the question is what the judgment of a tribunal shall be upon such admitted facts, the case stands in the same position as if the facts had been found and the question should arise as to what should be the judgment upon the facts so found. This is always a question of law. (R. p. 1108.)
>
> * * * * *
>
> The crucial question then is: Were the L. & N. and the N. C. & St. L. compelled to extend the reshipping privilege to grain dealers at Nashville in order to successfully compete with the transportation of grain, grain products, and hay on the Cumberland River? If they were, then the law of the land declares that the granting of the privilege to Nashville and not to Atlanta, where no such competition

existed, would not be a violation of Section III of the act to regulate commerce. (R., p. 1106.)

* * * * *

We think that the undisputed facts demonstrate that the reshipping privilege was extended to shippers and dealers at Nashville on account of the competition on the Cumberland River, and on that account alone, and that the undisputed evidence would not support any other finding on that proposition. * * *

Our conclusion in regard to the whole case is that under the facts appearing in the record the reshipping privilege at Nashville is not in violation of Section III, nor a discrimination in favor of Nashville as against Atlanta and the other Georgia points, and that the facts being undisputed, it is within the undoubted power of this court to so declare as a matter of law applicable to such a state of affairs. (R., p. 1108.)

ASSIGNMENTS OF ERROR.

The assignments of error (Record, pp. 1111, 1112) cover the following points, which we discuss, under the following heads, in the order stated:

1. When undue discrimination and preference is found to exist by reason of the use of the rebilling privilege at an intermediate point in a through route, water competition at such intermediate point, which does not affect or determine the through rate, does not constitute a ground, or legal right, to maintain the rebilling privilege at such point while denying the privilege to other localities that are found to be unduly or unreasonably prejudiced thereby.

2. The reason for establishing the reshipping privilege at Nashville was not, as stated by the Commerce Court, "undisputed," nor was it on "account of the competition on the Cumberland River, and on that account alone."

3. Where the existence of a discrimination is proven by uncontradicted evidence the question whether the discrimination is "undue or unreasonable" under Section III is a question of fact, within the power of the Commission to determine. It is not a question of law.

4. Where a carrier or carriers over a through route charge more to one person than to another for a transportation service, the question whether the two services are "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" under the provisions of Section II, is a question of fact to be determined by the Commission. It is not a question of law.

5. Where a rebilling privilege exists at a point upon one line in a through route, concurred in by all the carriers, parties to the through route, and the Commission duly finds that the existing privilege constitutes undue and unreasonable discrimination and preference, an order may run against all the carriers requiring them either to refuse concurrence in the maintenance of the existing privilege or to establish a like privilege at the points discriminated against, although such points may be upon other railroads in the through route.

6. The findings of the Commission that the maintenance of the rebilling privilege at Nashville, while denying the privilege to the Georgia cities, was unlawful and unduly and unreasonably discriminatory and prejudicial are supported by substantial evidence.

QUESTIONS OF LAW.

I.

When undue discrimination and preference is found to exist by reason of the use of the rebilling privilege at an intermediate point in a through route, water competition at such intermediate point, which does not affect or determine the through rate, does not constitute a ground, or legal right, to maintain the rebilling privilege at such point while denying the privilege to other localities that are found to be unduly or unreasonably prejudiced thereby.

Nashville is an intermediate point in the through route. The rates directly affected by the rebilling privilege are the through rates from the river crossings to points in the southeastern territory, and the existence of the rebilling privilege at that point is indisputable evidence that Nashville is an intermediate point. The river crossings and beyond to the west are stated in the rebilling privilege as the points of origin, and points in the southeastern territory as the points of final destination.

Water transportation into Nashville on the Cumberland River does not now, and has not for years, controlled or affected the through rates to the southeastern territory from the river crossings; these through rates are made wholly by the competition

at the river crossings; the commerce on the Cumberland River can only compete to Nashville, as all traffic destined beyond Nashville to the southeastern territory must of necessity go over the appellees' lines of railroad.

The local rates from Nashville to the Southeast are fixed by the appellees, and every shipper by water into Nashville must pay the local rates out; for such traffic there is no sliding scale, the local rate to each particular point must be paid in full. In this particular the shipper by the water lines into Nashville is at the same disadvantage as the grain dealers in the Georgia cities; he must pay the combination of the rate into Nashville and the fixed local rates out. The shipper over the railroads into Nashville secures the privilege of storage for the period of six months (which the shipper by water secures by reason of the break in the transportation and transfer to rail lines) and in addition the rail shipper secures the sliding rebate, which gives him the through rate to every point. All grain shipped by boat into Nashville has to be sacked, no grain is carried in bulk; it has to be transferred at an expense estimated at one cent per hundred pounds. The result of these handicaps and the existence of the rebilling privilege "bottles up" the water competition at Nashville; water competition extends no farther and can not affect any rates, unless it be the rates into Nashville. It is evident from the testimony that these rates into Nashville have not been affected in any material way; in the very beginning the rate into

Nashville from the river crossings was fixed at 10 cents per 100 pounds, and has not been changed.

The purpose of putting in the rebilling privilege was not to meet the water competition into Nashville so much as it was to secure the through traffic—to aid the railroads in overcoming the competition at the river crossings. A reference to the testimony makes this very apparent.

Bearing in mind that the rebilling privilege provides that there shall be a refund so that the total transportation charge shall equal and not exceed the through rate; that these through rates are less than the "sum of the locals" in and out of Nashville, and the refund varies from 3 to 7 cents per 100 pounds to the principal points—this refund being referred to by some of the witnesses as *an equalizer;* that the difference between the rail and water rate into Nashville was assumed to be 3 cents, the lowest refund, the following extracts from the evidence will be understood.

Maj. Stahlman testified (Record, p. 233):

> Q. [Assuming the local rate into Nashville to be reduced 3 cents to meet water competition.] * * * What would be the position of the grain dealer in Nashville as to all of these points where the refund is 4, 4½, 5, and 6 cents, instead of 3?
>
> A. It would be necessary to equalize.
>
> Q. What would be the effect on the grain dealer?
>
> A. If there were no equalization of rates it would be hurtful.

Q. What would be the effect upon the transportation companies—that is, the Louisville & Nashville and the Nashville & Chattanooga—so far as carrying freight into this southeastern territory is concerned?

A. They would not be able to handle the business if the allowance was only 3 cents and the necessity to equalize demanded 5.

Record, pages 199 and 200, the same witness said:

Q. What effect, Major, would it have upon the grain business at Nashville if reshipping was abolished and the rate in and out were maintained and the grain business had to be reorganized on the river basis for the inbound movement? * * * I do not mean to ask now, if you please, Major, any statement in dollars or cents, but generally what it would mean in the way of damage that the grain interests at Nashville would suffer.

Maj. STAHLMAN. Well, of course, it would very much curtail the business of these merchants; it would necessarily involve new conditions and changes. *It would take from them the advantages*—I will not say advantages, but the fair opportunity they have had of doing business—and leave everything in a chaotic state and their investments in elevators and warehouses located on the lines of road, terminal yards at Nashville——

Q. And not on the river?

A. And not on the river—would be of comparatively little or no value to them. I should say it would be very hurtful, although I would not undertake to say to what extent, because I do not know.

Mr. Bell, a grain dealer, testified (Record, p. 315):

> Q. What would the grain interests of Nashville do in the event the reshipping practice at Nashville was abolished and the present rate adjustment maintained?
>
> A. They would undoubtedly go to ruin.
>
> Q. They would make the sacrifice and the investment necessary to build up the cheaper link that you described in the through movement?
>
> A. They would certainly have to.
>
> Q. Or quit business?
>
> A. Certainly.
>
> Q. And they would have to do this *realizing they would not acquire any advantage over their competitors?*
>
> A. *Absolutely none.*

Mr. Barham, general freight agent of the Nashville, Chattanooga & St. Louis and of the Western & Atlantic Railroad, testified (Record, pp. 401 to 404):

> Mr. NEEDHAM. I understood you to state that if the rebilling privilege is taken out at Nashville you would be driven back to the competition upon the rivers at the river crossings. Do you not meet that competition now?
>
> A. Yes.
>
> Mr. NEEDHAM. If the rate on the river to Nashville was not substantially reduced—that is, if the new conditions pictured to us here were not (realized)—would you have any more competition if the rebilling practice was taken out than now?
>
> A. *Vastly more.*

Q. Explain that. I do not quite understand. Assuming now that the river competition to Nashville was not substantially more than it is now.

A. Yes. Now, let me see if I understand. You mean if the business is driven back to the Ohio River?

Mr. NEEDHAM. Yes. I want to understand you and you want to understand me. I understood you to say that no matter what happened or did not happen at Nashville, if the reshipping privilege was taken out at Nashville you would be driven back to the Ohio and Mississippi Rivers and would have to enter into competition there for the business. Now, I understood from that, that even if the river competition did not lower the rate to Nashville as it is to-day you would still be driven back to the river to compete with the other lines. Is that right?

A. Yes.

Q. Now, explain how it would come about that the competition from the Ohio and Mississippi Rivers between you and the other lines of railroad now to the southeast territory would be increased by the taking out of the rebilling privilege if it was not effected by a reduction of the rates on the river to Nashville.

A. * * * If the business gets to Nashville *and is sold by a Nashville dealer, we have a vastly increased chance of control*, and to show you what that means, ordinarily speaking, in round figures, 25 per cent of all the grain used in the southeast is reshipped at Nashville.

Of that 25 per cent the Nashville & Chattanooga carries 80 per cent. In other words, having no rails to any of the important Ohio River crossings, we yet handle over 16 per cent of all the grain carried into the South, and we could not hope to carry a fraction of this if compelled to obtain it solely at the Ohio River in competition with the lines there.

Judge MACK. *It comes to this practically: That the enterprise of the Nashville dealer makes the business for your road*, and if the Nashville dealer is exterminated in this way there would be nobody to make business for your road, because dealers on the Ohio River crossings are more important than those at Hickman or Paducah, and so the other Ohio River crossings would get the business as against you.

A. Undoubtedly; I could not hope to express it so well.

Mr. NEEDHAM. Then it is the storage of grain at Nashville and the enterprise of the Nashville dealer that has been referred to that makes this rebilling privilege so valuable to you in competing with other railroads; is that it?

A. *Yes, sir; of course, they are the controlling things.*

Mr. NEEDHAM. So far as your competition, then, with the railroads is concerned, it is quite as important to you that this rebilling privilege should be kept in at Nashville as it is on account of the water competition?

A. Oh, yes; I catch the purport of the question. In other words, I am perfectly

willing to emphasize the importance of the continuance of the reshipping privilege to our lines.

Mr. NEEDHAM. I want you to understand the question. I think you do.

A. You mean it is fortunate for us we have the river competition?

Mr. NEEDHAM. No; I mean that the rebilling privilege, providing storage at Nashville, and especially the enterprise of your grain dealers at Nashville, supplemented by the rebilling privilege, *enables you to compete with other lines of railroad* from the Ohio and Mississippi Rivers into the southeast territory?

A. Yes, sir.

This testimony shows clearly that the rebilling privilege is not maintained solely for the purpose of meeting the water competition into Nashville.

Mr. Barham, speaking of the competition into Nashville, states (Record, p. 378):

> We could, as I testified before the Commission, have accomplished this purpose in either one of two ways, and so far as I can see, in only two ways: First, by reshipping; or, second, by reduction in the rates to Nashville proper.

He expressly states that to abolish the rebilling privilege at Nashville would compel his company to go back to the river crossing and there compete for all of their business regardless of the water competition at Nashville. This rebilling privilege at an intermediate point where there are active grain dealers with capital, creates a storage amounting to about 500,000 tons per annum; this grain is purchased and

brought there by the grain dealers and can only come in and go out over the appellees' railroads. The elevators located on the railroads make the transfer easy and inexpensive. In fact, up to within a recent date elevation charges were paid by the railroads out of the through rate, but, paying the expense of elevation the grain dealers still have a great advantage over shippers by boat to Nashville as to the southeastern traffic by reason of the convenience of these elevators upon the railroads over which the traffic must pass to the Southeast. To the extent of this storage, which Mr. Barham says amounts to 25 per cent of all the grain sold in the southeastern territory, the railroads have no competition whatever; it is absolutely secured to them through the enterprise and business activity of the grain dealers; and the grain dealers are stimulated by the discriminatory rates which they now enjoy.

This storage at an intermediate point could not be supplied by the railroad as a part of transportation; the grain must be purchased and resold, involving not transportation but merchandising in grain. Mr. Barham is very frank in saying that the railroads by this method—the rebilling privilege—sought to obtain the active cooperation of all the grain dealers in Nashville, thus securing for their roads this large volume of noncompetitive traffic. He says that if this rebilling privilege is abolished they will be compelled to go back to the river crossings and compete for this business.

This review of the evidence gives a full and comprehensive understanding of the purpose and the effect of the rebilling privilege, and the real character of the river competition at Nashville; it is solely competition at an intermediate point in a through route; it does not affect or control the traffic or the through rate; the water line can not carry the traffic to its destination; it is not a party to a through route; its patrons must pay the full locals to the southeast upon appellees' railroads.

The following excerpts from opinions seem to establish beyond controversy that competition to be controlling, from any point of view, must affect the traffic at the long-distance point, and must be operative in determining the rate and the traffic (italics are mine):

> What was decided in the previous cases was that under the fourth section of the act *substantial competition which materially affected transportation and rates might, under the statute, be competent to produce dissimilarity of circumstances and conditions,* to be taken into consideration by the carrier in charging a greater sum for a lesser than for a longer haul. The meaning of the law was * * * that all competition, *provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making,* was proper under the statute to be taken into consideration. * * * Not only this, but if the distinction be applicable, *only that competition which might deflect at the point of origin the traffic from one carrier to another would be*

> *within the purview of that portion of the fourth section now under consideration*, and competition which was so great as to absolutely prevent the movement of the traffic, unless the lesser rate was exacted, would be outside of its operation. * * * Indeed, in the cases by which the controversy here before us is controlled, attention was pointedly called to the fact that in considering the power of the carrier, of its own motion, to charge a lesser sum for the longer haul, not only was the interest of the carrier to be taken into account, but also the interest of the public, *especially at the place from which the traffic moved and the place to which it was to be delivered* * * *.

The court then states two principles:

> First. The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about. * * *
>
> Second. That the competition relied upon *be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making*, the right in every event to be only enjoyed with a due regard for the interests of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered.

(*Louisville & N. R. Co.* v. *Behlmer*, 175 U. S., 648. See also *I. C. C.* v. *Alabama Mid. R. Co.*, 168 U. S., 144; *East Tenn.* v. *G. R. Co.* v. *I. C. C.*, 181 U. S., 1.)

In the last case cited (*East Tennessee* v. *G. R. Co.* v. *I. C. C.*), which is much relied upon in the opinion of the Commerce Court, the competition was at Nashville, the southern terminus of the route over which the traffic passed. The railroads approaching Nashville through Chattanooga met the railroad competition at Nashville. The issue was whether a lower rate could be charged at Nashville, where the competition existed than was charged at Chattanooga. This court stated that if the discrimination on the southern roads between Chattanooga and Nashville was removed Nashville would still get its traffic over the Louisville & Nashville at the lower rate, while Chattanooga would be charged the same that it had been charged before; therefore the discrimination would *in fact* exist, and the southern lines would not be able to compete for the Nashville traffic. The court said:

> * * * and hence the discrimination which thereby arose against Chattanooga would have likewise continued to exist; in other words, both Nashville and Chattanooga would have been exactly in the same position if the long and short haul clause had not been brought into play.
>
> That, as indicated in the previous opinions of this court, there may be cases where the carrier can not be allowed to avail of the competitive condition because of the public interests and the other provisions of the statute, is of course, clear.
>
> What particular environment may in every case produce this result can not be in advance indicated.

This case clearly recognizes that the competition, which was properly considered as affecting the rate, was the competition at the terminus of the through routes over which the freight was carried, namely, Nashville; in such a case the competition must exist at the point of final delivery.

The Peavey case is also referred to. In that case Mr. Justice Holmes, speaking for the court, says:

> The Union Pacific Railroad, after passing through a grain country, has its eastern termini at Omaha and Kansas City, on the Missouri River. Much the greater part, nine-tenths, more or less, of the grain gathered and carried by the road passes beyond the termini, especially to points farther east. During the season the Union Pacific needs all its cars to collect the grain, and therefore wants to get them back as quickly as possible from the end of its line. Furthermore, the shipments eastward are made more profitable in heavier loads than can be collected from the local stations. For these reasons the Union Pacific sought to prevent its own cars being carried beyond the termini, over connecting lines, and to have the grain shifted to other cars. To make the change it is commercially necessary to pass the grain through an elevator, where also it is weighed, another step in the transportation. * * *
>
> Competition, which was an element in the motives of the Union Pacific, led these other roads to make a similar arrangement. Probably, being through lines, they would not object to the Commission's order if that to the Union Pacific could be sustained. * * *

> As the contract with Peavey & Company purports to be only for grain transferred, it is not necessary to consider whether elevation could be allowed for as practically necessary under modern conditions even if the grain did not go on. For the purpose of this case so much of the order as meets the above-mentioned doubt by confining payments to grain reshipped within ten days seems proper enough and not open to review on the matter of fact. * * *
>
> The Union Pacific made the allowances in question to elevators at its termini; it had no motive to make them anywhere else. The competitors of the Union Pacific concerned in the Diffenbaugh case were compelled by competition to make the same allowance at Missouri River points, but they also make it nowhere else. * * * But the principle of the decision is that the allowance to elevators upon their own grain is to be stopped everywhere unless they are prevented from using the opportunity for treating their grain. Therefore this question of preference between cities does not need to be discussed. But, as remarked below, the Union Pacific could not be complained of on this ground, 176 Fed. Rep., 424, and it would be impossible to deny the same right to competing roads merely because, as the result of the conditions, one city would gain and another lose.

An important fact is stated by the court (p. 45):

> Meantime other elevators had sprung up, and in 1906 the Union Pacific extended the allowance made to Peavey & Company to all

elevators in Omaha, Council Bluffs, and Kansas City. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42.

The competition was at the termini of the Union Pacific, and this case holds that *at those points* it could be met by competing lines adopting the practice of the Union Pacific, namely, the use of elevator service. This practice did not change or affect rates east of Omaha and Kansas City. All shippers over either of the lines paid the same rates to the East. The competition could be met in only one way. That case can not be authority or a justification for a practice like the one at Nashville, which *changes the rates* applicable to the traffic beyond the point of competition. The competition at Nashville can be met by lowering the rates into Nashville, but it does not justify lowering the local rates south.

The Peavey case is not like the case at bar, but it supports the proposition that the competition must be met at the point where it exists. At that point the competition is to be met by giving the same rate or facility that is offered by the competing line. Wholly artificial conditions, voluntarily created by the carrier may not be used to justify disparities in charges. A carrier can not discriminate by charging one party a rate greater than the rate it contemporaneously accords to another party, for the transportation of a like kind of traffic, over the same line, in the same direction, and between the same points. We claim, as hereafter stated,

that this rebilling privilege is unlawful in that it violates the provisions of the second section of the act.

> The circumstances and conditions which may so far be considered as distinguishing traffics so as to take from different transportation charges the vice of preference have been described by this court. In *Wight* v. *United States*, 167 U. S., 512, 518, it is said: "It was the purpose of the section (2) to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor." These words are given more precision by the declaration "that the phrase, 'under substantially similar circumstances and conditions,' as found in section 2, refers to matters of carriage and does not include competition." And this was repeated in *Interstate Commerce Commission* v. *Alabama Midland Railway Co.*, 168 U. S., 144, 161, 166. The facts in both cases give significance to the rulings. In the first case the charges to the shippers were the same, but one was given extra facilities; in the second case the extraneous effect of competition was excluded as an element in the application of the section. There is also example in *Interstate Commerce Commission* v. *Delaware, L. & W. R. R. Co.*, 220 U. S., 235. It was there held that a carrier could not look beyond goods tendered to it for transportation in carload lots "to the ownership of the shipment" as

> the basis for determining the application of its established rates. Do the circumstances and conditions in this case give a greater power of discrimination and justify the lower charge to railroad fuel coal? * * * *Once depart from the clear directness of what relates to the carriage only and we may let in conditions which may become a cover for preferences.* * * * It must be kept in mind that it is not the relation of one railroad to another with which we have any concern, but the relation of a railroad to its patrons, who are entitled to equality of charges. * * *
>
> But such features do not affect the carriage, qualify, or alter the essential service, which is to get an article from one place to another. The greater or less inducement to seek the service is not the service. Such competition, therefore, is as extraneous to the transportation as the instances in the cases cited.
>
> (*Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 225 U. S., 326, 341, 342, 343.)

We respectfully insist that competition, to be entitled to consideration in fixing a rate or in applying varying lawful rates—as through rates and locals—must be a competition which affects the carriage of the through traffic or the through rate. It can not be competition at an intermediate point which may be met in a direct way at such point. The whole theory of allowing competition to change or modify the substantive law in either the second, third, or fourth sections of the act rests upon the sound and just basis that competition exists which has a substantial and

direct effect upon the carriage, the traffic, or the rate under consideration—*in its entirety*.

The through movement of traffic may be stopped at any point for two reasons or purposes—(1) where it is necessary as a part of the transportation—such, for instance, as transfer to a connecting line by means of elevators or other transfer facilities; or (2) to accommodate the shipper—as, for instance, to allow grain to be converted into flour, or mixed and graded, etc. The transaction in the first instance is a part of the transportation, and therefore affects the traffic directly, without any voluntary act on the part of the carrier to create a benefit or discrimination in favor of shippers; all like traffic over other lines may be treated in the same way to produce the same results. In the second case, the stoppage is purely for the benefit of the shipper, and is an advantage to the shipper, and the privilege must be granted to all shippers of like traffic and without undue or unreasonable discrimination between localities. If two patrons ship a like traffic, over the same line in the same direction, each shipper is entitled to the benefits of stoppage in transit which is voluntarily accorded to the other. If stoppage in transit is permitted at one locality on account of the existence there of mills, elevators, etc., at which the commodity may be commercially treated, then the same privilege of stoppage in transit should be accorded to another locality upon the route that has the same facilities and whose shippers desire to avail themselves of this advantage. These privileges can not be granted to a

shipper or shippers at an intermediate point, because it aids the carrier in securing through business from the point of origin; "such features do not affect the carriage, qualify or alter the essential service, which is to carry the article from one place to another. The greater or less inducement to seek the service is not the service." (*I. C. C.* v. *B. & O. R. Co.*, id.)

The water competition at Nashville, which, as Mr. Barham states, could be completely met by lowering the rate into Nashville, can not, therefore, be set up as a ground or right to maintain a voluntary stoppage in transit to induce the movement of grain from the river crossings to the southeastern territory over the rail lines of the appellees. It may be granted that the putting in of the rebilling privilege at this intermediate point where there is water competition may be an indirect way of meeting that local competition and subduing it, but it does not qualify or alter the essential service, which is to carry grain and grain products from the river crossings to the southeastern territory over through routes and upon joint rates. The local competition at Nashville can be met by reducing rates to that point, but not by a practice which changes the local rates from Nashville to the southeast, which would otherwise be applicable to the traffic, such part of the through route not being affected by this local competition.

II.

The reason for establishing the rebilling privilege at Nashville was not, as stated by the Commerce Court, "undisputed"; nor was it "on account of the competition on the Cumberland River, and on that account alone."

Some of the witnesses state that the rebilling privilege was established and is maintained solely for the purpose of meeting the water competition at Nashville. This line of testimony rests upon the fact that in the early history of transportation the traffic was carried on the rivers and when it reached Nashville it was unloaded and was at the disposal of the shipper; he could store it and treat it during any length of time and then ship it on by any existing method of transportation. At first this transportation south was by wagon; afterwards (1851) by rail from Nashville to Chattanooga. It still remained a fact that the freight had to be unloaded from the boat and transferred to and loaded upon the cars. There was a break in the transportation at this point; naturally buyers and sellers congregated and built up a grain business. It was quite natural when the railroad later extended its line from Nashville to the river crossings and began to compete with the boats for the traffic that the rail lines should voluntarily give these dealers at Nashville the rebilling privilege; it created traffic for the road and did not violate any provision of law. Other cities had not become important centers of the grain trade and could not be injured by the practice.

It is therefore stated by some of the witnesses that the rebilling privilege was compelled by the water competition and, as the river "is still there," it should be maintained regardless of its effect upon other cities; this seems to have been the view taken by the Commerce Court. But there was other and very important testimony to the contrary; testimony showing that the establishment of the rebilling privilege was not a necessity; Mr. Barham, the general traffic manager of the appellee company, frankly stated before the commission and the Commerce Court as heretofore quoted (Record, p. 378) "we could * * * have accomplished this purpose in *either of two ways*, and so far as I can see, in only two ways: First, by reshipping; or, second, by reduction in the rates to Nashville proper." So long as there were two methods of meeting that intermediate competition it can not be said that reshipping was compelled. Of two ways they chose the rebilling privilege because it would create a special inducement to the movement of through traffic from the River Crossings to the southeastern territory over their lines; it would greatly increase through traffic over the road in addition to meeting the water competition at Nashville. It gave an advantage to shippers at Nashville which meeting water competition by lowering rates did not give, namely, a sliding scale of rates *from* Nashville *to the Southeast*. If the traffic came in over the water the grain dealer was compelled to pay the local rate on appellees' road out of Nashville to every point in the

Southeast; if it came into Nashville over the rails of appellees he could send it out to any point in the southeastern territory upon the through rates which were much less than the local rates. It gave the Nashville grain dealers an advantage over dealers in other cities and enabled them to secure 25 per cent of the entire trade of the Southeast. The rebilling privilege has much more in it for the railroads than reducing rates into Nashville would have. It is these special advantages which make the rebilling privilege so attractive to the railroads and the Nashville grain dealers. It accomplishes far more than meeting the water competition at Nashville.

They say that taking the rebilling privilege out will lower the water rates into Nashville. This is the first instance on record where shippers have employed distinguished counsel to prevent the reduction of rates. Mr. Barham puts this matter squarely and fairly in his answers heretofore quoted. To Judge Mack's question, "It comes to this, practically, that the enterprise of the Nashville dealer makes the business for your road * * *," he answered, "Undoubtedly. I could not hope to express it so well"; and in answer to my question immediately following, "Then it is the storage of grain at Nashville and the enterprise of the Nashville dealer that has been referred to that makes this rebilling privilege so valuable to you in competing with other railroads, is that it?" A. "Yes, sir; of course, *they are the controlling things.*" And again, in answer to the question in which I stated "The rebilling privilege,

providing storage at Nashville, and especially the enterprise of your grain dealers at Nashville, supplemented by the rebilling privilege, *enables you to compete with other lines of railroad from the Ohio and Mississippi Rivers into the southeastern territory?*" he answered, "Yes, sir." Here, then, we have no great conflict of evidence, it is true, but two theories—one, that the rebilling privilege was and is compelled by the water competition; the other—and that one put forward by the traffic manager of the railroads—that it was chosen as one of two ways of meeting the water competition, and chosen because it possessed other advantages which would and does secure through traffic for the railroad. The rebilling privilege was more than a device for meeting competition at the intermediate point; it was a "traffic gatherer"; it does not effect the carriage, but it is very serviceable in getting the through business. It enabled them to compete successfully, not at Nashville but at the river crossings, for through business. The Commerce Court, therefore, was in error in saying that the rebilling privilege exists at Nashville "on account of the competition on the Cumberland River, *and on that account alone*"; and it is upon this error as a ground that the final judgment of the Commerce Court rests.

As there are two ways of meeting the competition at Nashville, however harmless the existence of the rebilling privilege may have been when it was instituted, if it has become unlawful under section 2 or unduly or unreasonably discriminatory under section

3 of the present statute, the carriers may be compelled to surrender this one method of meeting the competition at Nashville and meet it, to the extent that it exists, in the usual way by reducing the rates into Nashville. This will cause no loss as to this traffic, for they now refund as much, and more in some instances, as the difference between their present rate and the lower water rate.

If it is, as contended, a desirable way of meeting the local conditions existing at Nashville, then the carriers have the option, under the order, to extend the same privilege to the other cities where there are elevators and grain dealers desiring this privilege.

That the practice now results in discrimination is apparent; there can be no controversy upon this point. However harmless the discrimination may have been in the early development of the trade, it is now, under the statute and finding of the commission, a discrimination that is unlawful, undue and unreasonable.

III.

Where the existence of a discrimination is proved by uncontradicted evidence, the question whether the discrimination is "undue or unreasonable under section three" is a question of fact within the power of the commission to determine. It is not a question of law.

The Commerce Court in its opinion says:

> We may not annul the order for the reason, if it be so, that Nashville ought to be classed and equalized with Mississippi and Ohio River Crossings, nor may we annul it for the reason

> that Nashville is a natural concentration point or primary market for grain, if it be so, nor on the ground that Nashville is the proper place for stoppage of grain in order to protect the grain itself by handling and drying. We must annul the order, if at all, upon the ground that upon the undisputed facts the law declares that there is no violation of section 3 of the act to regulate commerce. (Record, p. 1106.)

And again:

> Where the facts of a case are admitted and the question is what the judgment of a tribunal shall be upon such admitted facts, the case stands in the same position as if the facts had been found and the question should arise as to what should be the judgment upon the facts so found. This is always a question of law. So in the present instance, the facts being undisputed, the question arises whether these facts show a violation of Section III, and the solution of the question involves a consideration and interpretation of said section which is peculiarly a question of law and within the power of the court to decide.

There are two questions of fact to be ascertained under section 3—first, is there discrimination, and, second, is the discrimination *undue or unreasonable*. Upon an undisputed state of facts a court may determine that there is a discrimination by applying the rules of law, especially those pertaining to the admission and weight of evidence. The second

proposition can not be determined by the application of any rule of law. It is, and must always remain, in whatever tribunal it is considered, a question of fact. The statute has not defined what is "undue or unreasonable" discrimination; the determination of this question can not be made by the application of any rule of law, but requires the exercise of judgment and discretion, or, as the chancellor in the English case puts it, "of common sense." It does not require a knowledge of law, but does require a keen business sense, to take a given set of facts, admitted if you please, consisting of the complexities of traffic, of commercial trade and intercourse, and from all these facts determine whether an admitted discrimination is undue or unreasonable.

The authorities upon this point are so clear and explicit that excerpts from them are a complete answer and refutation of the position taken by the Commerce Court upon this question.

In the Texas & Pacific case (162 U. S. 184) this court reviewed the English and American cases, in part, as follows:

> The third section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions, *not of law, but of fact*. * * * (p. 219).

Quoting the opinion of Lord Herschell:

> The question, therefore, which the tribunal, whether it be the court or the commissioners before whom such question comes, has to determine, is whether an undue preference or advantage is being given or whether one party is being unduly prejudiced or put to a disadvantage as compared with the other. I think it is clear that the section implies that there may be a preference, and that it does not make every inequality of charge an undue preference * * * and it cannot be doubted that whether in particular instances there has been an undue or unreasonable prejudice or preference *is a question of fact* (p. 226, 227).

Quoting from Chief Justice Erle:

> I beg to say that the argument from authority seems to me to be without conclusive force in guiding the exercise of this jurisdiction; the question whether undue prejudice has been caused *being a question of fact* depending on the matters proved in each case (p. 227).

Quoting Lord Selborne, then Lord Chancellor:

> The defendants gave a decided, distinct, and great advantage, as it appears to me, to the distant collieries. That may be due or undue, reasonable or unreasonable, but, under these circumstances, is not the reasonableness a question of fact? Is it not *a question of fact and not of law whether such a preference is due or undue?* Unless you can point to some

> other law which defines what shall be held to be reasonable or unreasonable, it must be and is a mere question, *not of law, but of fact* * * * no rule is given to guide the court or tribunal in the determination of cases or applications made under this 2d section. The conclusion is one of fact to be arrived at, looking at the matter broadly and applying common sense to the facts that are proved. I quite agree with Mr. Justice Wills that it is impossible to exercise a jurisdiction such as is conferred by this section, by any process of mere mathematical or arithmetical calculation (p. 227).

After reviewing the English and American authorities, this court, speaking through Mr. Justice Shiras, said:

> The conclusions that we draw from the history and language of the act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations * * * and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment (p. 233).

Referring to the facts from which conclusions are to be drawn, the court further said:

> We do not refer to these matters for the purpose of indicating *what conclusions ought to have been reached by the commission* * * *. *That was a question of fact*, and if the inquiry had been conducted on a proper basis, we should not have felt inclined to review conclusions so reached. (*Texas & P. R. Co.* v. *I. C. C.*, 162 U. S., 197–235.)

In the Car Distribution case (215 U. S., 452), this court discussed at length the power of the commission to determine what is undue and unreasonable discrimination *in a practice* and the power to prescribe a practice for the future under section 3 of the act. The practice complained of in that case did not affect rates, but did affect the instrumentalities used. The question of the delegation of power to the commission and the conclusiveness of its findings under section 3 are thus set forth in the opinion:

> In view of the facts found by the commission as to preferences and discriminations resulting from the failure to count the company fuel cars in the daily distribution in times of car shortage, and in further view of the far-reaching preferences and discriminations alleged in the answer of the commission in this case, and which must be taken as true, as the cause was submitted on bill and answer, *it is beyond controversy that the subject with which the order dealt was within the sweeping provisions of section*

3 of the act to regulate commerce prohibiting preferences and discriminations. But it is contended that although this be the case, as the order of the commission not only forbade the preferences and discriminations complained of, but also commanded the establishment of a rule, excluding such discriminations for a future definite period of not exceeding two years, the order transcended the authority conferred upon the commission. This proceeds upon the assumption that section 15 of the act to regulate commerce, as enacted by the act of June 29, 1906, while conferring upon the commission the authority, upon complaint duly made, to declare a rate or practice affecting rates illegal, and to establish a new and reasonable rule or practice affecting such rates for a term not exceeding two years, has no relation to complaints concerning preferences or discriminations, unless such practices, when complained of, are of a character to affect rates, which it is insisted is not here the case. The pertinent part of the section in question (15) reads as follows (34 Stat., 589): (quoting) * * *

The contention gives to the words found in the earlier part of the section, "any regulation or practice whatsoever of such carrier or carriers affecting such rates," a dominant and controlling power so as to cause them to limit every other provision in the section, however general in its language. We do not stop to critically examine the provision relied upon for the purpose of pointing out, as a matter of

grammatical construction, the error of the contention, because we think, when the text of the section is taken into view and all its provisions are given their natural significance, it obviously appears that the construction relied upon is without foundation, and that to sustain it *would be to frustrate the very purpose which it is clear, when the entire provision is considered, it was designed to accomplish, and thus would be destructive of the plain intent of Congress in enacting the provision.* The antecedent construction which the interstate-commerce act had necessitated, and the remedial character of the amendments adopted in 1906, all serve to establish the want of merit in the contention relied upon. In addition, to adopt it would require us to hold that Congress, in enlarging the power of the commission over rates, had so drafted the amendment as to cripple and paralyze its power in correcting abuses as to preferences and discriminations which, as this court has hitherto pointed out, it was the great and fundamental purpose of Congress to further.

Conceding, for the sake of the argument, the existence of the preferences and discriminations charged, it is insisted, when the findings made by the commission are taken into view and the pleadings as an entirety are considered, it results that the discriminations and preferences arose from the fact that the railroad company chose to purchase its coal for its fuel supply from a particular mine or mines, and that, as it had a right to do so, it is impossible, without *destroying freedom of contract*, to predi-

> cate illegal preferences or wrongful discriminations from the fact of purchase. But the proposition overlooks the fact that the regulation addresses itself, not to the right to purchase, but to the duty to make equal distribution of cars. The right to buy is one thing and *the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things.* * * * At best, these arguments but suggest the complexity of the subject, and the difficulty involved in making any order which may not be amenable to the criticism that it leads to or may beget some inequality. Indeed, the arguments just stated, and others of a like character which we do not deem it essential to specially refer to, but assail the wisdom of Congress in conferring upon the commission the power which has been lodged in that body to consider complaints as to violations of the statute and to correct them if found to exist, or attack as crude or inexpedient the action of the commission in performance of the administrative functions vested in it, and upon such assumption invoke the exercise of unwarranted judicial power to correct the assumed evils. It follows from what we have said that the court below erred in enjoining the order of the commission.

This case sustains the power of the commission to determine and prescribe practices for the future.

It is within the power of the court to review the record and consider and correct any errors of law.

It may determine whether the commission failed to consider any proper evidence in coming to its conclusion that the practice was unduly and unreasonably discriminatory; but the Commerce Court may not weigh the evidence or substitute its judgment upon a question of fact for the judgment of the commission.

Interstate Com. Com. v. *Ill. Cent. R. Co.*, 215 U. S., 452, 475–478.

Interstate Com. Com. v. *Union Pac. R. Co.*, 222 U. S., 541.

Interstate Com. Com. v. *C., R. I. & P. R. Co.*, 218 U. S., 88.

I. C. C. v. *D., L. & W.*, 220 U. S., 251.

Proctor Gamble v. *U. S.*, 225 U. S., 282.

I. C. C. v. *L. & N. R. Co.* (opinion June 20).

It follows from these authorities that the Commerce Court erred in determining the questions of fact under the third section.

IV.

Where a carrier or carriers over a through route charge more to one person than to another for a transportation service, the question whether the two services are "a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions," under the provisions of section 2, is a question of fact to be determined by the commission. It is not a question of law.

The finding of the commission was, first, that maintaining the rebilling privilege at Nashville while denying said privilege to dealers in the Georgia

cities is *unlawful*. Section 2 of the act to regulate commerce provides:

> That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, *or other device*, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons *for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, etc.*

Section 12 provides:

> That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, * * * *and the commission is hereby authorized and required to execute and enforce the provisions of this act;*

Section 15 provides:

> That whenever, after full hearing upon a complaint, * * * or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), *the commission shall be of opinion that any* * * *

*regulations, or practices whatsoever of such carrier or carriers * * * are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the commission is hereby authorized and empowered to determine and prescribe what * * * regulation or practice is just, fair, and reasonable, to be thereafter followed*, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, * * *.

The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this act.

It will be observed that under section 12 the commission is required to execute and enforce the provisions of the act. It therefore becomes its duty under this general provision to see that all violations of the act are prevented.

In the case at bar the testimony before the commission showed that shipments of grain over through routes and upon joint rates pass from Louisville, Paducah, Evansville, and Hickman over the appellees' railroads to and through Nashville and to and through Atlanta to points beyond; that there are shippers located at Nashville, Atlanta, and other Georgia points that buy grain and ship over these lines to points in the southeastern territory; that

different rates are contemporaneously charged to different shippers for this traffic, by reason of the application of the rebilling privilege, over the same lines, under similar circumstances and conditions. To illustrate: A grain dealer at Nashville and a grain dealer at Atlanta are competing for trade in Greenville, S. C., and each one sells five carloads of grain at that point; they both buy the grain at Louisville, Ky., the five cars for the Nashville dealer are shipped over the appellees' road to Nashville and there unloaded; afterwards, within the limit of the rebilling privilege, the grain is reloaded into appellees' cars, passed on over appellees' roads to Atlanta, and thence over connecting lines to Greenville. Contemporaneously with this shipment five cars are purchased at Louisville by the Atlanta dealer, shipped over the appellees' road through Nashville to Atlanta and there unloaded, and within the same time the grain is reloaded and the five cars sent on to Greenville. There can be no question that this is the same kind of traffic; it is over the same lines of railroad, under precisely the same circumstances and conditions; there is unloading and reloading in both cases; not an iota of difference excepting that one shipment is unloaded into an elevator and reloaded at Nashville, and the other is unloaded into an elevator and reloaded at Atlanta. The through rate is charged to the Nashville dealer, which is 35 cents per 100 pounds; the Atlanta dealer is charged 24 cents to Atlanta and 16 cents

from Atlanta to Greenville, making a total charge of 40 cents, 5 cents more than is charged the Nashville shipper. (Record, p. 477, 478.) These facts were presented to the commission as to other points, and show conclusively that there is violation of section 2. It applies to many places, the difference in the charges varying as the rates vary.

The result of this application of rates under the rebilling privilege necessarily gives to Nashville a lower rate and a trade monopoly at many points. This is not accomplished "by any special rate, rebate, or drawback"; the rates applied are all lawful tariff rates; it is accomplished, however, by "other devices," namely, giving the rebilling privilege to Nashville and thereby making the through rate applicable in all cases, while denying the rebilling privilege to shippers in the Georgia cities, engaged in the same business, competing in the same field of consumption, conducting identically the same traffic, over the same lines. By this device—*a matter of voluntary contract*—the shippers who reside in one city are charged a less rate than is charged to shippers residing in other cities for a like and contemporaneous service in the transportation of a like kind of traffic under substantially like circumstances and conditions. Section 2 declares that a common carrier who by such device makes a greater charge to one shipper than to another "shall be deemed guilty of unjust discrimination, which is hereby prohibited and *declared to be unlawful.*"

This court, speaking through Mr. Justice Brewer, said:

> It was the purpose of the section [2] to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. (*Wight* v. *U. S.*, 167 U. S., 512, 518; Alabama Midland Ry. Co., 168 U. S., 144, 161, 166.)

In the Fuel Coal case (225 U. S., 326, 341), Mr. Justice McKenna, speaking for the court, said:

> The circumstances and conditions which may so far be considered as distinguishing traffics so as to take from different transportation charges the vice of preference have been described by this court. [Citing *Wight* v. *United States*, id., and the Midland Railway case, id.] The facts in both cases give significance to the rulings. In the first case the charges to the shipper were the same, but one was given extra facilities; in the second case the extraneous effect of competition was excluded as an element in the application of the section. There is also example in *Interstate Commerce Commission* v. *Delaware, L. & W. R. R. Co.* (220 U. S., 235). It was there held that a carrier could not look beyond goods tendered to it for transportation in carload lots, "to the ownership of the shipments" as the basis for determining the application of its established rates. Do the circumstances and

> conditions in this case give a greater power of discrimination and justify the lower charge to railroad fuel coal? It is admitted that the fact that a railroad is the shipper or consumer is not a circumstance or condition that affects the carriage, nor can the different uses to which the coal may be put, and it would seem necessarily that any other extraneous condition or circumstance could have no greater potency. Once depart from the clear directness of what relates to the carriage only and we may let in considerations which may become a cover for preferences.

In the Forwarding case (220 U. S. 235), Mr. Justice White, now Chief Justice, speaking for the court, said:

> It is not open to question that the provisions of section 2 of the act to regulate commerce was substantially taken from section 90 of the English railway clauses consolidation act of 1845, known as the equality clause. (*Texas & Pac. Railway* v. *Interstate Com. Com.*, 162 U. S., 197, 222.) * * * It was therefore settled in England that the clause forbade the charging of a higher rate for the carriage of goods for an intercepting or forwarding agent than for others. (*Great Western R. Co.* v. *Sutton*, 1869, L. R. 4 H. L., 226; *Evershed* v. *London & N. W. Ry. Co.*, 1878, 3 App. Cas., 1029, and *Denaby Main Colliery Co.* v. *Manchester, &c., Ry. Co.*, 1885, 11 App. Cas., 97.)

We submit that the finding of the commission that this was unlawful under section 2 is clearly supported by the evidence and the authorities.

V.

Where a rebilling privilege exists at a point upon one line in a through route, concurred in by all the carriers parties to the through rate, and the commission duly finds that the existing privilege constitutes undue and unreasonable discrimination and preference, an order may run against all the carriers ordering them to either refuse concurrence in the maintenance of the existing privilege, or to establish a privilege at the points discriminated against, although such points may be upon another or different line in the through route.

The traffic involved in this controversy consists of grain, grain products, and hay. To carry this from the markets at the river crossings to the southeastern territory where it is consumed there are, as heretofore noted, many through routes and joint rates. The territory is large, and to connect at the various crossings and reach all the important points in the territory the traffic must necessarily pass over several lines of railroad. But these railroads have become by contract united and interrelated by concurrence in the individual tariffs. It is by these agreements that through routes and joint rates are established for the convenience of the public. As before noted, any practice affecting the carriage can not be maintained upon any one line without the concurrence of all the other lines who are parties to the tariff. On the other hand, any lawful practice may be established by these same carriers upon any line in the group by the concurrence of all the carriers. It is by this method that the milling-in-transit privilege, now universal, is established at different points

upon different lines of railroad where mills exist. Discrimination as to the use of this milling privilege is rare, because it is granted without question wherever there is a demand for it; by this practice flouring mills are distributed over the country along the lines of the railways carrying the grain products. A like condition should exist as to the rebilling privilege. In the case at bar the commission cited before it all the roads parties to these through routes who were, under joint rates, carrying this traffic from the points of origin to the many points of destination in the southeastern territory. And as a final result of the investigation, upon substantial evidence as to the conditions (transcript of the testimony before the commission), the commission found that the existence of the rebilling privilege at Nashville was unlawful and unduly discriminatory so long as the privilege was refused to the Georgia cities whose dealers were engaged in precisely the same business, in the same territory, and shipping over these various lines. The question then arose whether the privilege should be taken out at Nashville. After careful consideration as to the value of such a privilege to the public, in that it furnished storehouses for grain during the period between its production and its actual demand for consumption, the commission decided to put the order in the alternative form, and said to these carriers parties to these through routes and joint rates, you may retain the privilege at Nashville provided you put it in at the competing points. It is not claimed that the commission by this order attempts

to compel the appellee carriers to put in the rebilling privilege at all the Georgia cities; the commission simply said to this group of carriers who are consenting and concurring in the establishment and maintenance of this rebilling privilege at Nashville, you shall cease and desist from maintaining the privilege at Nashville either by putting it in your tariffs or by concurring in appellee's tariff, unless by concurrence and agreement you put it in at the other points; take your choice.

The provisions of section 15, as construed by this court in the Car Distribution case, are broad and comprehensive, and empower the commission to determine whether any "regulations or practices whatsoever of such carrier *or carriers* * * * are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act," and the commission is authorized and empowered "to determine and prescribe what regulation or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier *or carriers* shall cease and desist from such violation *to the extent* to which the commission finds the same to exist."

This provision of the section refers to a practice of a carrier *or carriers*. Clearly a practice may be performed by one and consented to by other carriers on a through route; then it becomes the act of all the carriers and gives jurisdiction to the commission to forbid it. If the carriers are before the

commission and are ordered to cease and desist, yet continue to concur in a tariff of another carrier which contains the practice forbidden, the concurring carriers are equally guilty of a violation of the order and can be punished for such violation. The act provides that the commission may order the carriers to desist from a violation of the statute "to the extent to which the commission finds the same to exist." The extent to which the commission finds the rebilling privilege at Nashville to be unlawful is its use there while it is refused to like competing points; therefore these carriers—the appellees and the concurring carriers—are jointly ordered either to cease and desist from maintaining the rebilling privilege at Nashville in the through routes, or to establish it at the other points named. The *extent of the violation* is the use of it at Nashville so long as it is refused at the other points.

The commission had jurisdiction of these fourteen carriers. They were before it, appearing by counsel, and had a full hearing upon this controversy. The order is, therefore, binding upon them all. Jointly they can carry out either alternative; without joint action they can not maintain the privilege at Nashville. As well might the members of a partnership say when enjoined to desist from doing a particular thing, unless they should concurrently do another act, We can not do this because all the partners will not agree to the act permitted. It is for these joint or concurring carriers to determine as a matter of

business policy whether they will retain the privilege at Nashville or whether they will establish it at other competing cities where there are elevators and grain dealers engaged in a like and competing business with Nashville. We respectfully submit that the order in this respect is a valid one.

VI.

The findings of the commission that the maintenance of the rebilling privilege at Nashville, while denying the privilege to the Georgia cities, was unlawful and unreasonably discriminatory and prejudicial, are supported by substantial evidence.

As already shown, the discrimination in this case is apparent upon an examination of the rebilling privilege, and the tariffs which were before the commission. There was ample evidence that there were jobbers and grain dealers and elevators at each of the Georgia points named in the order. It required no expert testimony to inform the commission, or anyone else, for that matter, that the rebilling practice resulted in advantage to the Nashville grain dealers and decided disadvantage and prejudice to the grain dealers in the Georgia cities.

The rebilling device affecting the application of rates to the Nashville grain traffic is referred to by witnesses as an "advantage," and counsel for the railroads contend that to take it out will injure the business of the Nashville grain dealers. The rebilling privilege is a decided advantage to Nashville and its

grain dealers. If we ask, What is it they will lose by taking out this privilege? We quickly find from the facts that the loss is a monopoly. They will still have the rails by which they can bring their grain from the river crossings to Nashville, their elevators in which they can store it, railroads to convey it on to points in the southeastern territory, and all of the rates charged will be lawful tariff rates.

The advantage is in having this movable refund of from 3 to 7 cents, according to point of destination, which enables the Nashville dealers to hold a monopoly of the grain trade in southeastern territory. It is a clear, unquestioned, and undeniable discrimination in favor of Nashville and against the Georgia cities. When, as before stated, we consider that 1 cent per bushel is a good profit for the jobber, and then observe the wide difference in the rates charged to the Nashville dealers and those charged to the dealers in the Georgia cities, the conclusion of the commission that this discrimination was undue and unjust is not only *supported* by substantial evidence, but the *conclusion* is *absolutely irresistible*.

The injustice of maintaining this privilege at Nashville while refusing it to these other centers of trade is apparent. The objections to its removal are transparent. To permit this discrimination to continue would be legalizing a most flagrant violation of the plain provisions of the act declaring undue discriminations unlawful.

We respectfully submit that the Commerce Court erred in its statement that if competition existed at Nashville, *regardless of its effect or extent*, "* * * then the law of the land declares that the granting of the privilege to Nashville and not to Atlanta, where no such competition existed, would not be a violation of section 3 of the act to regulate commerce." The "law of the land" nowhere declares that any particular state of facts, admitted or controverted, constitutes a violation of section 3; it says undue or unreasonable discrimination is unlawful, but what amounts to undue and unreasonable discrimination is a question of fact to be determined by the commission.

The court also erred, even were the facts undisputed from which the conclusion is to be drawn that the discrimination *is undue*, in substituting its judgment upon these facts for the judgment of the commission. The last pronouncement by this court upon this question, in the opinion rendered January 20, 1913 (*Interstate Commerce Commission* v. *Louisville & Nashville R. R.*), is: "The courts can not settle the conflict nor put their judgment against that of the rate-making body." If the commission had committed an error of law in refusing to consider a competition *which substantially affected the traffic and rates*, the court could declare the law and refer the case back to the commission to determine the facts under the law as stated by the court. But the record and report clearly show that the commission duly con-

sidered the water competition into Nashville in determining, as it did, that the discrimination was undue and unreasonable.

Respectfully submitted.

CHARLES W. NEEDHAM,
Assistant Solicitor for
Interstate Commerce Commission.

EXHIBIT.

[Record, page 515 (g).]

INTERSTATE COMMERCE COMMISSION.

(Division of Tariffs, November 8, 1911.)

Statement showing a comparison of the through published rates on grain, carloads (allowed milling-in-transit privileges at Nashville, Tenn.), and the through combination of local rates based on Nashville, Tenn., applicable on the same commodity, from the Ohio River crossings (designated) to the southeastern points named below.

[Rates are in cents per 100 pounds.]

To	Beaufort, S. C.	Brunswick, Ga.[1]	Burton's Mill, S. C.	Charleston, S. C.[1]	Fernandina, Fla.	Jacksonville, Fla.[1]	Live Oak, Fla. (for beyond).	Mayport, Fla.	Millidale, Fla.	Port Royal, S. C.	Read Phosphate Works, S.C.	Savannah, Ga.[1]	Ten Mile, S. C.	Florence, Ala.	Sheffield, Ala.[1]	Tuscumbia, Ala.	Glen Carbon, Ala.	Gurnee, Ala.	York, Ala.	Blocton, Ala.	Allendale, S. C.[1]	Fairfax, S. C.
Through rate.																						
From Cincinnati, Ohio	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	29	29	33	29	35	34

Combination rate.																								
From Cincinnati, Ohio, to Nashville, Tenn.	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16
From Nashville, Tenn.	[2] 17	17	17	[2] 17	17	17	17	17	17	[2] 17	17	17	[2] 17	[3] 15	[3] 15	[3] 15	21	[3] 21	[3] 25	[3] 21	[3] 29½	[3] 28½		
Total combination rate.	33	33	33	33	33	33	33	33	33	33	33	33	33	31	31	31	37	37	41	37	45½	44½		
Difference.	10	10	10	10	10	10	10	10	10	10	10	10	10	8	8	8	8	8	8	8	10½	10½		
Through rate.																								
From Ohio River crossings, viz:																								
Cairo, Ill.																								
Evansville, Ind.																								
Louisville, Ky.	23	23	23	23	23	23	23	23	23	23	23	23	23	21	21	21	27	27	31	27	35	34		
Paducah, Ky.																								
Combination rate.																								
From Ohio River crossings (named) to Nashville, Tenn.	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10		
From Nashville, Tenn.	[2] 17	17	17	[2] 17	17	17	17	17	[2] 17	17	17	[2] 17	[3] 15	[3] 15	[3] 15	21	[3] 21	[3] 25	[3] 21	[3] 29½	[3] 28½			
Total combination rate.	27	27	27	27	27	27	27	27	27	27	27	25	25	25	31	31	35	31	39½	38½				
Difference.	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4½	4½			

[1] Comparison of rates to these points were shown in a previous statement.
[2] Not applicable via the L. & N. R. R.
[3] Not applicable via the N. C. & St. L. Ry.

Statement showing a comparison of the through published rates on grain, etc.—Continued.

To	Boyce, Tenn.	Chattanooga, Tenn.[1]	Citico, Tenn.	East Chattanooga, Tenn.	McCarthy, Tenn.	Winter Spur, Tenn.	Akron, Ala.[1]	Decatur, Ala.[1]	Guntersville, Ala.[2]	Gunters Landing, Ala.[2]	Hobbs Island, Ala.[2]	New Decatur, Ala.	Wyeth City, Ala.[2]	Chase, Ala.	Huntsville, Ala.[1]	Wellington, Ala.	Cordova, Ala.	Jasper, Ala.	Calera, Ala.	South Calera, Ala.[2]	Parrish, Ala.
Through rate.																					
From Cincinnati, Ohio	21	21	21	21	21	21	33	23	23	23	23	23	23	21	21	27	24	24	27	27	27
Combination rate.																					
From Cincinnati, Ohio, to Nashville, Tenn	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16
From Nashville, Tenn	[3]16	[3]16	16	[3]16	[3]16	16	[4]26	[4]17	[3]17	[3]17	[3]17	[4]17	[3]17	[3]17	[3]17	23	[4]18	[4]18	[4]22	[4]22	23
Total combination rate	32	32	32	32	32	32	42	33	33	33	33	33	33	33	33	39	34	34	38	38	39
Difference	11	11	11	11	11	11	9	10	10	10	10	10	10	12	12	12	10	10	11	11	12
Through rate.																					
From Ohio River crossings, viz:																					
Cairo, Ill																					
Evansville, Ind	21	21	21	21	21	21	33	21	21	21	21	21	21	21	21	27	22	22	25	25	25
Louisville, Ky																					
Paducah, Ky																					

Combination rate.																						
From Ohio River crossings (named) to Nashville, Tenn.	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
From Nashville, Tenn.	[3] 16	[3] 16	16	[3] 16	[3] 16	16	[4] 26	[4] 17	[3] 17	[3] 17	[3] 17	[4] 17	[3] 17	[3] 17	[3] 17	23	[4] 18	[4] 18	[4] 22	[4] 22	23
Total combination rate	26	26	26	26	26	26	36	27	27	27	27	27	27	27	27	33	28	28	32	32	33
Difference	5	5	5	5	5	5	5	6	6	6	6	6	6	6	6	6	6	6	7	7	8

[1] Comparison of rates to these points were shown in a previous statement.
[2] Not applicable via the C. N. O. & T. P. Ry.
[3] Not applicable via the L. & N. R. R.
[4] Not applicable via the N. C. & St. L. Ry.

Statement showing a comparison of the through published rates on grain, etc.—Continued.

To	Cottondale, Fla.	Holt, Ala.	Northport, Ala.	Tuscaloosa, Ala.	Cardiff, Tenn.	Carters, Tenn.	Emory Gap, Tenn.	Harriman, Tenn.	Harriman Jct., Tenn.	McElwee, Tenn.	Pyott, Tenn.	Rockwood, Tenn.	Knoxville, Tenn.[1]	Englewood, Tenn.[2]	Marysville, Tenn.	Lenoir City, Tenn.	Riverton, Ala.	Haleyville, Ala.	Brilliant, Ala.	
																			Barley, corn, oats, and rye.	Wheat.
Through rate.																				
From Cincinnati, Ohio	35	27	27	27	19	[3]19	19	19	[3]19	[3]19	[3]19	19	21	21	24	21	27	28	31	33½
Combination rate.																				
From Cincinnati, Ohio, to Nashville, Tenn	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16
From Nashville, Tenn	[4]27	[4]18	[4]18	[4]18	16	16	16	16	16	16	16	16	19	19	22	[3]19	17	21	[4]30	[4]30
Total combination rate	43	34	34	34	32	32	32	32	32	32	32	32	35	35	38	35	33	37	46	46
Difference	8	7	7	7	13	13	13	13	13	13	13	13	14	14	14	14	6	9	15	12½
Through rate.																				
From Ohio River crossings, viz:																				
Cairo, Ill	34	22	22	22	21	21	21	21	21	21	21	21	23	23	26	23	17	20	.....	.....
Evansville, Ind	34	25	25	25	21	21	21	21	21	21	21	21	23	23	26	23	20	23	27	29½
Louisville, Ky	33	25	25	25	19	[4]19	19	19	[3]19	[3]19	[3]19	19	21	21	24	21	22	25	29	31½
Paducah, Ky	34	22	22	22	21	21	21	21	21	21	21	21	23	23	26	23	17	20	28	28

Combination rate.																				
From Ohio River crossings (named) to Nashville, Tenn.	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
From Nashville, Tenn.	[4]27	[4]18	[4]18	[4]18	16	16	16	16	16	16	16	19	19	22	[3]18	17	21	[4]30	[4]30	
Total combination rate	37	28	28	28	26	26	26	26	26	26	26	29	29	32	29	27	31	40	40	
Difference from—																				
Cairo, Ill.	3	6	6	6	5	5	5	5	5	5	5	6	6	6	6	10	11	.....	.....	
Evansville, Ind.	3	3	3	3	5	5	5	5	5	5	5	6	6	6	6	7	8	13	10½	
Louisville, Ky.	4	3	3	3	7	7	7	7	7	7	7	8	8	8	8	5	6	11	8½	
Paducah, Ky.	3	6	6	6	5	5	5	5	5	5	5	6	6	6	6	10	11	12	12	

[1] Comparison of rates to these points were shown in a previous statement.
[2] Rates applicable on corn and wheat only.
[3] Not applicable via the L. & N. R. R.
[4] Not applicable via the N. C. & St. L. Ry.

M. P. Washburn's Southeastern No. 7, ICC 78.